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CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona *ex rel.* Jacqueline)
E. Schafer, Director, Arizona)
Department of Environmental)
Quality,)

Plaintiff,)

v.)

Sterling Network Exchange No. 2,)
LLC, a Delaware limited liability)
company,)

Defendant.)

No. CIV 01-0359-PHX-SLV

**CONSENT DECREE BETWEEN
THE STATE OF ARIZONA AND
STERLING NETWORK
EXCHANGE NO. 2, LLC**

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I. RECITALS

1. WHEREAS, the State of Arizona, on its own behalf and on behalf of the Director of the Arizona Department of Environmental Quality (the State), intends to file a Complaint, in conjunction with this Consent Decree, under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (CERCLA) and the Water Quality Assurance Revolving Fund (WQARF) A.R.S. § 49-281, *et seq.* seeking relief in the form of, *inter alia*, a declaratory judgment to ensure funding or performance of a remedial action in response to alleged releases and alleged threats of releases of hazardous substances into the environment from a parking lot (the Property) located within the Motorola, Inc. 52nd Street Superfund Site (the Site). This Property is located on the northeast Corner of Central Avenue and Van Buren Street, Phoenix, Arizona and is adjacent to the Former Phoenix Newspaper Building at 120 East Van Buren Street, Phoenix, Arizona. The legal description of the Property is contained in the Prospective Purchaser Agreement and attached as Exhibit 1 hereto. The Former Phoenix Newspaper Building is also the subject of a Consent Decree filed concurrently herewith between the State and Sterling Network Exchange LLC;

2. WHEREAS, effective November 3, 1989, the United States Environmental Protection Agency (EPA) and the Water Quality Assurance Revolving Fund (WQARF)

A.R.S. § 49-281, *et seq.*, listed Motorola 52nd Street Superfund on the National Priorities List (NPL) pursuant to CERCLA, by publication in the Federal Register on October 4, 1989 (54 Fed. Reg. 41000);

3. WHEREAS, pursuant to CERCLA § 104(d)(1), 42 U.S.C. § 9604(d)(1), EPA has designated ADEQ as the lead agency with authority to plan and implement certain response actions under the National Contingency Plan (NCP), 40 C.F.R. Part 300, including enforcement activities related to removal and remedial actions at the Site;

4. WHEREAS, the State alleges that a release or threat of release of hazardous substances as defined in A.R.S. § 49-201(18) has occurred at the Property, that it is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and A.R.S. § 49-281(6) and that Sterling Network Exchange No. 2, LLC, ("Sterling No. 2") is a "person" pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and A.R.S. 49-201(26);

5. WHEREAS, A.R.S. § 49-285.01 authorizes ADEQ to provide to a prospective purchaser of a facility a written release and a covenant not to sue and to seek an order of this Court awarding the prospective purchaser protection from contribution claims pursuant to CERCLA and WQARF where: (1) the extent of contamination at the facility has been reasonably identified; (2) the prospective purchaser is not liable for a release or threatened release of a hazardous substance at the facility; (3) the proposed development will not exacerbate existing contamination; and (4) the settlement will provide a substantial public benefit;

6. WHEREAS, the State has undertaken activities to determine the nature and extent of the release and the threat of release of hazardous substances at the Site;
7. WHEREAS, Sterling No. 2 qualifies as a "prospective purchaser" of the Property in accordance with the criteria set forth in A.R.S. § 49-285.01(B);
8. WHEREAS, the proposed redevelopment of the Property will not exacerbate Existing Contamination and will provide a public benefit through the productive reuse of empty commercial property;
9. WHEREAS, the State and Sterling No. 2 are authorized to enter into this settlement regarding Covered Matters as defined in this Consent Decree;
10. WHEREAS, upon judicial approval of this Consent Decree, Sterling No. 2, as defined herein, will be entitled to contribution protection pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613 and A.R.S. § 49-292(C);
11. WHEREAS, the State and Sterling No. 2 desire to establish certain rights and obligations between themselves concerning claims that have arisen, or might arise, or be asserted in the future in connection with or relating to the Property, including those claims which were or could have been asserted in this action;
12. WHEREAS, the State and Sterling No. 2 do not admit and retain the right to controvert the validity of the recitations contained in this Consent Decree in any contemporaneous or subsequent proceedings (other than proceedings related to the validity, implementation, or enforcement of this Consent Decree);

13. WHEREAS, the State and Sterling No. 2 agree that settlement of this matter and entry of this Consent Decree is made in good faith, without any admission of any liability for any purpose;

14. WHEREAS, Sterling No. 2 denies all allegations in the Complaint not heretofore admitted;

15. WHEREAS, the State and Sterling No. 2 agree that nothing herein nor any action taken hereunder, including the payment of funds, shall be taken or construed as an admission of liability on any claim or cause of action, nor shall it be taken or construed as a waiver of any defense relating to any of the claims and causes of action asserted in this action;

16. WHEREAS, the State and Sterling No. 2 agree and the Court finds that entry of this Consent Decree is in the public interest, minimizes litigation, and is reasonable, fair and consistent in light of the purposes of CERCLA and WQARF;

17. WHEREAS, the State and Sterling No. 2, having consented to the issuance and entry of this Consent Decree, agree to be bound by the terms herein; and,

18. WHEREAS, each undersigned representative of the State and Sterling No. 2 to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this Document.

NOW, THEREFORE, IT IS ORDERED BY THE COURT AND AGREED TO BY THE PARTIES AS FOLLOWS:

II. JURISDICTION

19. This Court has jurisdiction over the subject matter of this action and supplemental jurisdiction over State law claims pursuant to 28 U.S.C. §§ 1331, 1345 and 1367; §§ 107 and 113(b) of CERCLA, 42 U.S.C., 42 U.S.C. §§ 9607 and 9613(b); A.R.S. § 49-292 and personal jurisdiction over all parties in this action. Solely for the purposes of this Consent Decree and the underlying complaint, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. INCORPORATION OF RECITALS

20. The recitals as set forth herein are hereby incorporated into the Consent Decree and agreed to by the Parties.

IV. PARTIES

21. The parties to this Consent Decree are the State of Arizona and Sterling Network Exchange No. 2, LLC (Sterling No. 2).

V. PARTIES BOUND/ASSIGNMENT OF COVENANT

22. This Consent Decree shall apply to and be binding upon the State of Arizona and Sterling No. 2.

23. To the maximum extent permitted by law and with no warranty, guarantee or indemnification by the State of Arizona that the protections set forth in this Consent Decree are legally assignable, and notwithstanding any other provision of this Consent

Decree, the State of Arizona does not object to the assignment of this Consent Decree if the assignee qualifies pursuant to A.R.S. § 49-285.01 (A) and (B). Sterling No. 2 must provide written notice to ADEQ at least fifteen business days prior to the date of transfer, sale or assignment of the Property. All rights, benefits and obligations conferred upon Sterling No. 2 under this Consent Decree are assumed by the assignee upon the transfer, sale or assignment as prescribed by A.R.S. § 49-285. 01 (E) and (F) and Section XI (Covenant Not to Sue).

24. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits of this Consent Decree, except as the State of Arizona and the assignor agree otherwise and accordingly modify this Consent Decree in writing. Moreover, prior to or simultaneous with any transfer of or assignment of interest in the Property, the transferee or assignee must consent in writing to be bound by the terms of this Consent Decree.

VI. BINDING EFFECT

25. This Consent Decree shall apply to and be binding upon the Parties, their successors, agents and assigns. Any change in ownership or corporate status of a Party including, but not limited to, any transfer of assets or real or personal property shall in no way alter its responsibilities under this Consent Decree. The terms of this Consent Decree are mutually enforceable by the Parties to this Consent Decree. Sterling No. 2

hereby agrees to provide notice of this Consent Decree and the obligations contained herein to any successors and assigns.

VII. PURPOSE

26. The purposes of this Consent Decree are as follows:

A. To protect the public health and welfare and the environment;

B. To resolve the claims between the State and Sterling No. 2 regarding Covered Matters as defined herein;

C. To obligate Sterling No. 2 to provide a substantial public benefit pursuant to A.R.S. § 49-285.01(A)(4)(c), to-wit: redevelopment of the Property as an annex to complement and otherwise support the on-going renovation and redevelopment of the former Phoenix Newspapers building located at 120 East Van Buren Street in Phoenix, Arizona.

D. To obligate Sterling No. 2 to perform all remedial measures specified in the Prospective Purchaser Agreement in compliance with the WQARF program statutes and rules, and other applicable provisions of A.R.S. Title 49, including, but not limited to A.R.S. §§ 49-151 and 49-152; and

E. To protect Sterling No. 2 against claims for contribution by any person regarding Covered Matters as provided herein.

27. The intent of the Parties is that, unless otherwise provided by this Consent Decree, Sterling No. 2 will receive a covenant not to sue and contribution protection

under CERCLA and WQARF to the extent allowed by law, so long as Sterling No. 2 complies with this Consent Decree.

28. The State and Sterling No. 2 agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Sterling No. 2 and is in the public interest.

29. Sterling No. 2 recognizes that while this Consent Decree may resolve the issue of its liability for Covered Matters, it does not resolve its liability, if any, for matters not covered by this Consent Decree. The State expressly reserves the right to bring any claim against Sterling No. 2, and/or any Successor Party for matters not covered by this Consent Decree and does not release Sterling No. 2 from liability, if any, for any matters that do not constitute Covered Matters within the meaning of this Consent Decree.

VIII. DEFINITIONS

30. Unless otherwise expressly defined herein, the terms used in this Agreement are as defined under those statutes establishing the Water Quality Assurance Revolving Fund (WQARF) (A.R.S. § 49-281 *et seq.*); and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601 *et seq.*). The definition under WQARF shall control where conflicting definitions exist for a term used in both WQARF and CERCLA.

31. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State of Arizona.

32. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, 101 Stat. 1613 (1986).

33. "Complaint" shall mean the lawsuit filed by the State in the United States District Court for the District of Arizona filed contemporaneously with this Consent Decree.

34. "Consent Decree" shall mean this Agreement, including any Appendices, modifications, or additions made thereto.

35. "Covered Matters" shall mean any civil liability Sterling No. 2 may now or hereafter have under CERCLA or WQARF for Existing Contamination as of the date of this Consent Decree, including any actions, whether judicial or administrative, by the State or any other person, related to such Existing Contamination. Covered Matters shall not include:

A. Claims based on failure by Sterling No. 2 to comply with its obligations under this Consent Decree;

B. Civil liability arising out of the treatment, storage, transportation, or placement on or into the ground of hazardous substances, pollutants or contaminants at locations other than the Property;

C. Future civil liability arising from conditions that are unknown to the State at the time this Consent Decree is lodged. The Parties acknowledge that the conditions known include:

i. That the Property is located adjacent to the former Phoenix Newspapers Building, which consists of multiple stories, including a basement and a sub-basement containing drywells from which a release of hazardous substances into the environment occurred;

ii. Sufficient information has been provided by Sterling Network Exchange, LLC, and Sterling No. 2 to ADEQ that reasonably identifies the nature and extent of contamination existing on or emanating from the Property; and

iii. Those conditions as described in documents in the possession or control of the State as of the effective date of this Consent Decree.

D. Civil liability for future releases or threatened releases of hazardous substances, pollutants or contaminants by Sterling No. 2, or arrangement for disposal by Sterling No. 2, of hazardous substances, pollutants, or contaminants after the Effective Date of this Consent Decree;

E. Civil liability for exacerbation by Sterling No. 2, of Existing Contamination at or beneath the Site;

F. Civil liability for future violations of local, state, or federal statutes or regulations;

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G. Criminal liability;

H. Natural resource damages at or related to the Site.

36. "Day" shall mean a calendar day; however, should a deadline fall on a Saturday, Sunday or a state or federal holiday, the deadline will be construed to continue to the next day that is not a Saturday, Sunday, or state or federal holiday.

37. "EPA" shall mean the United States Environmental Protection Agency.

38. "Existing Contamination" shall mean the release or threat of release of any hazardous substances, as defined by A.R.S. § 49-281(8), present or existing on, under, in, into, at, or from the Property as of the Effective Date of this Consent Decree.

39. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an uppercase letter.

40. "Parties" shall mean the State of Arizona and Sterling No. 2 (each individually referred to as a "Party").

41. "Plaintiff" shall mean the State of Arizona.

42. "Property" shall mean the Property adjacent to the former Phoenix Newspapers Building located at 120 East Van Buren Street, Phoenix, Arizona, as more fully described in Exhibit 1 to this Consent Decree (Prospective Purchaser Agreement).

43. "Prospective Purchaser Agreement (PPA)" shall mean the agreement entered into by the Parties on September 6, 2000 and attached hereto as Exhibit 1.

44. "Remedial actions" means actions defined in A.R.S. § 49-281(12).

45. "Site" as defined by A.R.S. § 49-281(14), shall mean the Motorola, Inc. (52nd Street Plant) Superfund Site, located in Phoenix, Maricopa County, Arizona, and depicted generally on the map included in Exhibit 1.

46. "State" shall mean the State of Arizona, including the Department of Environmental Quality, and Jacqueline E. Schafer, Director of the Arizona Department of Environmental Quality.

47. "Sterling No. 2" shall mean Sterling Network Exchange No. 2, LLC, a Delaware limited liability company.

48. "WQARF" shall mean the Arizona Water Quality Assurance Revolving Fund, A.R.S. Title 49, Chapter 2, Article 5, as amended.

IX. CERTIFICATION OF STERLING NO. 2

49. Sterling No. 2 hereby certifies that it did not cause or contribute to the Existing Contamination or otherwise cause or contribute to a release or threatened release of a hazardous substance at the Property before Sterling No. 2 acquired title. Sterling No. 2 further certifies that it is not affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance at or from the Property through any familial relationship, any corporate or contractual relationship, other than a contract to protect a security interest or to purchase the Property. Based upon the representations by Sterling No. 2, and ADEQ's reliance upon these representations, Sterling No. 2 represents that it is not currently liable for an existing or threatened release of a hazardous substance at the Property.

50. Sterling No. 2 further certifies that, to the best of its knowledge and belief, it has not altered, mutilated, discarded, or otherwise disposed of any records, documents, or other information regarding Existing Contamination, except that this certification does not include drafts or copies or other documents, including but not limited to message slips, containing information that Sterling No. 2 already submitted to the State without alteration. Sterling No. 2 certifies that, prior to the title acquisition of the Property by Sterling No. 2 on June 26, 2000, it was not an owner, operator, or trustee of the Property or any portion thereof. Sterling No. 2 also certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to ADEQ the information in its possession or control which relates to the environmental conditions at the Property. If Sterling No. 2 failed to provide ADEQ with all of the information in its possession or control regarding the environmental conditions of the Property, or if the information supplied by Sterling No. 2 and relied on by ADEQ is inaccurate due to the intentional, willful, or negligent acts or omissions of Sterling No. 2 and/or its agents or contractors, or if Sterling No. 2 owned or operated the Property prior to the title acquisition by Sterling No. 2 on June 26, 2000, then the Covenant Not to Sue in Section XI and the Contribution Protection in Section XIII shall not be effective, and ADEQ reserves all rights it may have against Sterling No. 2. If the unprovided or inaccurate information is provided or corrected by Sterling No. 2 following the execution of this Consent Decree, then the State may, in its sole but reasonable discretion, accept such information as timely provided and waive the provision respecting the ineffectiveness of the

Contribution Protection and Covenant Not to Sue. The waiver by the State shall not be withheld in a manner that is arbitrary or capricious.

X. SPECIFIC OBLIGATIONS OF STERLING NO. 2

51. In addition to its obligations under this Consent Decree, Sterling No. 2 agrees to comply with and/or perform all the duties and responsibilities set forth in the Prospective Purchaser Agreement.

XI. COVENANT NOT TO SUE

52. Upon the effective date of this Consent Decree, the State covenants not to sue Sterling No. 2 under WQARF, or Section 107 of CERCLA, 43 U.S.C. § 9607, with respect to Covered Matters. This Covenant Not to Sue shall take effect upon entry of this Consent Decree by the Court. This Covenant Not to Sue is limited to Covered Matters and does not limit the State's right to pursue any other claims relating to or arising out of any other matters whatsoever against Sterling No. 2. This Covenant Not to Sue is conditioned upon the satisfactory performance by Sterling No. 2 of its obligations under this Consent Decree.

53. Upon the effective date of this Consent Decree, Sterling No. 2 hereby covenants not to sue and not to assert any claims or causes of action against the State of Arizona, its authorized officers, employees or representatives with respect to Covered Matters under this Consent Decree, including but not limited to (1) any direct or indirect claims for reimbursement from the WQARF or any other provision of law, (2) any claim against the State of Arizona including any department, agency, or instrumentality of the

State of Arizona under WQARF, A.R.S. § 49-285, or CERCLA Section 107, 42 U.S.C. § 9607, or Section 113, 42 U.S.C. § 9613, related to the Property, or (3) any claims arising out of remedial actions at the Property related to Existing Contamination, including claims based on ADEQ's oversight or implementation of such activities or approval of plans for such activities. This covenant does not preclude Sterling No. 2 from suing the State for failure to comply with the terms in this Consent Decree. Except as otherwise provided in this Consent Decree, Sterling No. 2 may assert any and all causes of action it has or hereafter may have against any other person.

XII. RESERVATION OF RIGHTS

54. The covenant not to sue set forth in Section XI above does not pertain to any matters other than those expressly specified in that Section. The State of Arizona reserves all rights against Sterling No. 2 with respect to all other matters, including but not limited to, the following:

(a) claims, if any, based on a failure by Sterling No. 2 to meet a requirement of this Consent Decree;

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants at or from the Property caused or contributed to by Sterling No. 2, its successors, assignees, lessees, or sub-lessees;

(c) any liability resulting from exacerbation by Sterling No. 2, its successors, assignees, lessees or sub-lessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release at the Property after the Effective Date of this Consent Decree of hazardous substances, pollutants or contaminants not within the definition of Existing Contamination;

(e) criminal liability;

(f) civil liability for past or future violations of local, State or federal laws or regulations by Sterling No. 2.

55. Nothing in this Consent Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Arizona may have against any person, firm, corporation or other entity not a party to this Consent Decree or not otherwise entitled to the benefits of this Consent Decree pursuant to Section V. The State expressly reserves the right to bring any appropriate action against persons and entities who are not parties to this Consent Decree.

56. Nothing in this Consent Decree is intended to limit the right of the State of Arizona to undertake remedial actions at the Property or to seek to compel persons other than Sterling No. 2 to perform or pay for remedial actions at the Property. Nothing in this Consent Decree shall in any way restrict the nature or scope of remedial actions which may be taken or be required by the State in exercising its authority under State or federal law. Sterling No. 2 acknowledges that it is purchasing property where remedial actions may be required. Sterling No. 2 shall exercise due care at the Property with respect to Existing Contamination and shall comply with all applicable local, State, and

federal laws and regulations related to proper management and control of the Existing Contamination. Sterling No. 2 agrees to cooperate fully with ADEQ in the implementation of remedial actions at the Property and further agrees not to interfere with such remedial actions. ADEQ agrees, consistent with its responsibilities under applicable law, to use all reasonable efforts to minimize any interference with Sterling No. 2's operations by such entry and remedial actions. Sterling No. 2 represents that it shall not, and its proposed development will not, exacerbate or contribute to Existing Contamination, create additional contamination by an act or omission, or cause the Existing Contamination to present a substantial health risk to the public. In the event Sterling No. 2 becomes aware of any action or occurrence which causes or threatens a release of hazardous substances at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or the environment, Sterling No. 2 shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify ADEQ of such release or threatened release.

XIII. CONTRIBUTION PROTECTION

57. With regard to claims for contribution against Sterling No. 2, the Parties hereto agree that, upon the Court's entry of this Consent Decree, Sterling No. 2 shall be protected from contribution actions or claims and cost recovery actions or claims as provided by WQARF, A.R.S. § 49-292(C), and CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), for Covered Matters. Should this Consent Decree be assigned pursuant to

Section V, the State of Arizona does not warrant, guarantee, or indemnify that the protections afforded herein are legally assignable.

XIV. EASEMENT/NOTICE TO ADEQ AND SUCCESSORS IN INTEREST

58. Sterling No. 2 shall grant ADEQ and its authorized representatives an easement to provide access to the Property for purposes of ensuring compliance with this Consent Decree and/or the Prospective Purchaser Agreement, or for remedial actions authorized pursuant to A.R.S. Title 49, Chapter 2, Article 5 in connection with contamination of the Site as of the date of acquisition of ownership of the Property. ADEQ agrees to provide reasonable notice to Sterling No. 2 of the timing of remedial actions to be undertaken at the Property.

59. Sterling No. 2 and any subsequent purchaser of the Property shall provide written notice to ADEQ of any sale, assignment or other transfer of the Property at least 15 business days before the date of the transfer.

60. Sterling No. 2 shall ensure that assignees, successors in interest, lessees, and sub-lessees of the Property shall provide ADEQ with access to the portion of the Property within their possession and control, for the purposes specified in Paragraph 58. Sterling No. 2 shall ensure that a copy of the Prospective Purchaser Agreement is provided to any current or subsequent lessee, or sub-lessee or assignee, or purchaser of the Property as of the effective date of the Prospective Purchaser Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the

Property or an interest in the Property are consistent with this Section and Section V (Parties Bound/Assignment of Covenant) of the Consent Decree.

61. On assignment, the Assignee assumes the obligations and the benefits of the Prospective Purchaser Agreement and Consent Decree. All Assignees must meet the requirements of A.R.S. § 49-285.01(A) and (B). Unless the Assignor has breached the Prospective Purchaser Agreement or Consent Decree, the Assignor retains the benefits of the Prospective Purchaser Agreement and Consent Decree.

XV. TERMINATION OF EASEMENT

62. If Sterling No. 2 or other parties bound by this Consent Decree pursuant to Section V believe that the easements granted under Section XIV (Easement/Notice to ADEQ and Successors in Interest) are no longer necessary to ensure compliance with this Agreement or A.R.S. Title 49, Sterling No. 2 or such parties may request in writing that ADEQ terminate the easements, provided, however, that the easements shall continue in force unless and until the party requesting such termination receives written agreement from ADEQ to terminate such provisions, which agreement shall not be unreasonably withheld.

XVI. OTHER CLAIMS

63. Nothing in this Consent Decree shall constitute or be construed as providing any release, covenant not to sue, contribution protection or dismissal of any claim to any person not a Party to this Consent Decree, except as specifically set forth in Section V.

XVII. RIGHTS IN EVENT OF FAILURE TO OBTAIN COURT APPROVAL

64. If the State files a motion for entry of the Consent Decree after considering public comment pursuant to Section XVIII herein and the District Court approves this Consent Decree in the exact form in which it is presented by the Parties, neither of the Parties may appeal the District Court's decision. If the District Court, or an appellate court if the District Court's approval is appealed, does not approve this Consent Decree, then this Consent Decree shall be null and void. If a non-party appeals or petitions and an appellate court takes any action that has the effect of reversing the District Court's approval of this Consent Decree, the Consent Decree shall be null and void. If this Consent Decree is declared null and void under this Section, then the Parties agree to renegotiate this Consent Decree in an effort to reach an agreement that will be approved by the District Court. If this Consent Decree is not approved, the Court's decision shall have no effect on the Prospective Purchaser Agreement, and the complaint filed in the District Court shall be dismissed without prejudice.

XVIII. FILING AND OPPORTUNITY FOR PUBLIC COMMENT

65. This Consent Decree shall be filed with the Court for a period of not less than 30 days to provide an opportunity for public review and comment before the Court enters the Consent Decree as a final judgment. Within fourteen days of filing the Consent Decree, Sterling No. 2 shall publish at its own expense a notice of its availability for review and comment two times in the Arizona Business Gazette and

provide notice to any other interested person. All comments shall be submitted to the Court and to both Parties. The public review and comment period shall run for 30 days beginning on the date of the last publication of the notice of availability for review and comment. The State reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, inadequate, or is not in the public interest.

XIX. SEVERABILITY CLAUSE

66. If any provision of this Consent Decree is declared invalid or unenforceable, or is not approved in the exact form in which it is presented by the Parties, the entire Consent Decree shall be null and void. To this end, the provisions of the Consent Decree are not severable.

XX. NOTICES AND SUBMISSIONS

67. The person designated to receive all correspondence and notices for Sterling No. 2 is as follows:

Name:	Sterling Network Exchange No. 2, LLC
	Attention: Anthony Wanger
Mailing Address:	650 Dundee Road, Suite 370
	Northbrook, Illinois 60062
	Telephone: (847) 480-4000
	Facsimile: (847) 480-0199

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In addition, copies of all correspondence and notices shall be sent to Sterling No. 2's attorney:

Name: Robert Kramer
Mailing Address: Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012
Telephone: (602) 916-5464
Facsimile: (602) 916-5664

The key contact and person designated to receive all correspondence for ADEQ is:

Name: Kris Kommalan
Mailing Address: Superfund Programs Section
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
Facsimile: (602) 207-4236

XXI. DOCUMENT RETENTION

68. Sterling No. 2 agrees to retain and make available to ADEQ for inspection and copying all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the Effective Date of this Consent Decree. Prior to the destruction of said records described above, Sterling No. 2 will offer the physical control and possession of said records to ADEQ. The retention policy is limited in effect to remedial actions regarding Existing Contamination at the Property, and does not apply to day-to-day operations of the Property.

XXII. EFFECTIVE DATE

69. The Effective Date of this Consent Decree shall be the date of entry by the Court.

XXIII. RETENTION OF JURISDICTION

70. This Court, until it terminates this Consent Decree, retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XXIV. SECTION HEADINGS

71. The section headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

XXV. SIGNATORIES

72. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

73. Sterling No. 2 hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless:

(a) the State notifies Sterling No. 2 in writing that it no longer supports entry of the Consent Decree; or

(b) the Court declines to approve the Consent Decree.

XXVI. PAYMENT OF COSTS

74. Sterling No. 2 agrees to pay ADEQ in advance for all anticipated fees associated with filing the Complaint in this matter. Sterling No. 2 also agrees to pay ADEQ the costs incurred in preparing and executing this Consent Decree and all accompanying documents. ADEQ shall timely provide Sterling No. 2 with a statement that Sterling No. 2 shall pay no more than 15 days after the Court's entry of this Consent Decree.

AS TO THE STATE:

The State of Arizona

By: The Arizona Department of Environmental Quality

By: 

David Esposito, Division Director
Office of Waste Programs
Arizona Department of Environmental Quality

Date: 2/15/01

AS TO THE DEFENDANT:

**Sterling Network Exchange No. 2, LLC, a Delaware
limited liability company**

By: Sterling Network Manager No. 2, LLC

By: 

Its: MEMBER

Date: 2/16/01

///

IT IS SO ORDERED this _____ day of _____, 2002.

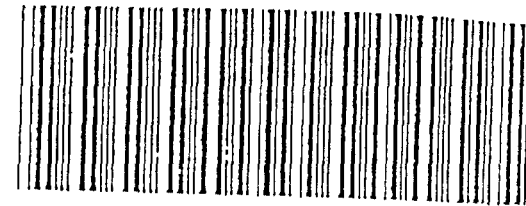
Judge, United States District Court

EXHIBIT 1

EXHIBIT 1
PROSPECTIVE PURCHASER AGREEMENT

RETURN VIA
FLEMING ATT. SERVICE
253-1135

When Recorded, Hold for Pickup by:
Robert J. Kramer
Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2000-0688096 09/06/2000 04:45

ARQUEL 1 of 1

PROSPECTIVE PURCHASER AGREEMENT

I. INTRODUCTION.

This Prospective Purchaser Agreement ("Agreement") is made and entered into by and between the Arizona Department of Environmental Quality ("ADEQ" or "the Department") on behalf of the State of Arizona and Sterling Network Exchange No. 2, LLC ("Purchaser") collectively, the "Parties".

ADEQ enters into this Agreement pursuant to A.R.S. § 49-285.01 and A.R.S. § 49-292.

Purchaser is a Delaware limited liability company, the address of which is 650 Dundee Road, Suite 370, Northbrook, Illinois 60062. The real property that is the subject of this agreement is bounded by Central Avenue, Van Buren Street, First Street, and Polk Street in Phoenix, Arizona (the "Property").

The Parties agree to undertake all actions required by the terms and conditions of this Agreement and A.R.S. § 49-285.01 and A.R.S. § 49-292. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Reservation of Rights by State of Arizona), the potential liability of Purchaser for the Existing Contamination at the Property which could otherwise result from Purchaser becoming the owner of the Property.

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The Parties agree that Purchaser's entry into this Agreement, and the actions undertaken by Purchaser in accordance with the Agreement, do not constitute an admission of any liability by Purchaser.

The resolution of this potential liability, in exchange for provision by Purchaser to the State of Arizona of a substantial public benefit, is in the public interest.

II. DEFINITIONS.

1. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in Water Quality Assurance Revolving Fund ("WQARF"), Arizona Revised Statutes Title 49, Chapter 2, Article 5, or the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.* ("CERCLA") or in rules or regulations promulgated under WQARF or CERCLA shall have the meaning assigned to them in WQARF or CERCLA respectively or in such regulations, including any amendments thereto. In the event of a conflict, definitions under WQARF shall apply.

2. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State of Arizona.

3. "Existing Contamination" shall mean any hazardous substances as defined by A.R.S. § 49-201(18) present or existing on or under the Property as of the effective date of this Agreement.

4. "Parties" shall mean ADEQ and Purchaser.

5. "Property" shall mean the Facility as defined by A.R.S. § 49-281(6) which fits the legal description in Exhibit 1 of this Agreement.

6. "Purchaser" shall mean Sterling Network Exchange No. 2, LLC, a Delaware limited liability company.

7. "Site" as defined by A.R.S. § 49-281(14) shall mean the Motorola/52nd Street Site, located in Phoenix, Maricopa County, Arizona, and depicted generally on the map attached as

Exhibit 2. The Site shall include the Property, and all areas where hazardous substances have come to be located.

III. STATEMENT OF FACTS.

8. The Site is identified on the WQARF Registry as an area where hazardous substances have been detected in the environment due to releases of hazardous substances from the Property and other sources located within the boundaries of the Site and ADEQ has been provided sufficient information set forth in Exhibit 3 to reasonably identify the extent of the contamination at the Property.

IV. RESPONSIBILITIES OF PURCHASER

9. Purchaser represents that Purchaser did not cause or contribute to the Existing Contamination or otherwise cause or contribute to a Release or Threatened Release of a hazardous substance at the Property or the Site before Purchaser acquired title to the Property.

10. Purchaser represents that it is not affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance at the Property or the Site through any familial relationship, any corporate or contractual relationship, other than a contract to protect a security interest.

11. Purchaser represents that Purchaser's involvement with the Property and the Site has been limited to the following: (i) Property tours by representatives of Purchaser; and (ii) Engagement of Geotechnical and Environmental Consultants, Inc. ("GEC") to perform standard pre-acquisition due diligence tasks related to the Property. The work by GEC related to the Property is reflected in Item 2 in Exhibit 3 and generally consisted of: (i) document and records review, Property tour, and other activities commonly associated with the performance of a Phase I Environmental Site Assessment done in general conformance with ASTM Standard E 1527-97; (ii) geophysical survey (consisting of ground penetrating radar and electro-magnetic survey); and (iii) soil gas and soil sampling at numerous locations on the Property. Based upon the

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representations by Purchaser, and ADEQ's reliance upon these representations, Purchaser represents that it is not currently liable for an existing or threatened release of a hazardous substance at the Property.

12. Purchaser bears the burden of proving that any hazardous substance existed on the Property as a result of releases of the hazardous substance before the date of acquisition of ownership or operation of the Property.

13. Purchaser shall exercise due care at the Property with respect to Existing Contamination and shall comply with all applicable local, state, and federal statutes and regulations. Purchaser recognizes that the implementation of remedial actions at the Property by ADEQ or its contractors may interfere with Purchaser's use of the Property, and may require closure of its operations or a part thereof. Purchaser agrees to cooperate fully with ADEQ or its contractors in the implementation of remedial actions at the Site and further agrees not to interfere with such remedial actions. ADEQ and its contractors agree, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Purchaser's operations by such entry and remedial actions.

14. Purchaser represents that it shall not exacerbate or contribute to Existing Contamination, or cause the Existing Contamination to present a substantial health risk to the public. In the event Purchaser becomes aware of any action or occurrence which causes or threatens a release of hazardous substances at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify ADEQ of such release or threatened release.

15. Purchaser agrees to perform those activities set forth in Section V (Description of Substantial Public Benefit).

16. For the purposes of this Agreement, ADEQ relies on the representations of Purchaser. This Agreement is voidable by ADEQ in the event of misrepresentations by Purchaser.

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V. DESCRIPTION OF SUBSTANTIAL PUBLIC BENEFIT.

17. Purchaser agrees to provide the following substantial public benefit:

Productive reuse of a vacant or abandoned industrial commercial facility pursuant to A.R.S. § 49-285.04(A)(4)(c), and benefits attendant thereto. More specifically, Purchaser intends to redevelop the Property as an annex to complement and otherwise support the on-going renovation and redevelopment of the former Phoenix Newspapers, Inc. property located at 120 East Van Buren Street in Phoenix Arizona (the "Former PNI Property"), which renovation and redevelopment is the subject of the Prospective Purchaser Agreement by and between Sterling Network Exchange, LLC and ADEQ dated and effective April 3, 2000 and recorded in the Official Records of Maricopa County, Document 00-0266337. The redevelopment of the Property directly and indirectly will create jobs for the occupants and surrounding businesses, will increase the value of both the Property and the Former PNI Property to the community, and possibly bring business and businesses to downtown Phoenix that otherwise might not have a presence there.

18. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to A.R.S. § 44-1201.

19. Purchaser agrees to perform all remedial measures in compliance with the WQARF program statutes and rules, and other applicable provisions of A.R.S. Title 49, including, but not limited to, A.R.S. § 49-151 and § 49-152, and if pursuant to a consent judgment, under the Department's supervision, the work to be performed in the Statement of Work attached as Exhibit

4. The parties agree that there is no Exhibit 4 to this Agreement.

VI. EASEMENT/NOTICE TO ADEQ AND SUCCESSORS IN INTEREST.

20. Purchaser shall grant ADEQ and its authorized representatives easements to provide access to the Property for purposes of ensuring compliance with this Agreement, or for remedial actions in response to contamination at the Property as of the date of acquisition of

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ownership or operation of the Property. ADEQ agrees to provide reasonable notice to Purchaser of the timing of remedial measures to be undertaken at the Property.

21. Within 30 days from the effective date of this Agreement, Purchaser shall record a certified copy of this Agreement with the County Recorder's Office in the county in which the Property is located. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. Purchaser shall send a copy of these documents to the persons listed in Section XIV (Notices and Submissions).

22. Purchaser and any subsequent purchaser of the Property shall provide written notice to ADEQ of any sale, assignment or other transfer of the Property at least fifteen (15) business days before the date of the transfer.

23. Purchaser shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. Purchaser shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section X (Parties Bound/Transfer of Covenant) of the Agreement.

24. On assignment, the Assignee assumes the obligations and the benefits of the Agreement. Moreover, prior to or simultaneous with any transfer of the Property, the Transferee as a part of the notice required by this section must consent in writing to be bound by the terms of this Agreement. All Assignees must meet the requirements of A.R.S. § 49-285.01(A) and (B). Unless the Assignor has breached the Agreement, the Assignor retains the benefits of the Agreement.

VII. STATE OF ARIZONA'S COVENANT NOT TO SUE.

25. Subject to the Reservation of Rights in Section VIII of this Agreement, the State of Arizona covenants not to sue or take any other civil or administrative action against Purchaser

for any and all civil liability for injunctive relief or reimbursement of remedial action costs pursuant to WQARF or pursuant to 42 U.S.C. § 9607(a), with respect to the Existing Contamination.

VIII. RESERVATION OF RIGHTS BY STATE OF ARIZONA.

26. The covenant not to sue set forth in Section VII above does not pertain to any matters other than those expressly specified in that Section. The State of Arizona reserves and the Agreement is without prejudice to all rights against Purchaser with respect to all other matters, including, but not limited to, the following:

- a) claims based on a failure by Purchaser to meet a requirement of this Agreement;
- b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants at or from the Property caused or contributed to by Purchaser, its successors, assignees, lessees or sublessees;
- c) any liability resulting from exacerbation by Purchaser, its successors, assignees, lessees or sublessees, of Existing Contamination;
- d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination;
- e) civil or criminal liability for past or future violations by Purchaser of local, State or federal statutes or regulations.

27. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Arizona may have against any person, firm, corporation or other entity not a party to this Agreement.

28. Nothing in this Agreement is intended to limit the right of the State of Arizona to undertake future remedial actions at the Property or to seek to compel parties other than Purchaser to perform or pay for remedial actions at the Property. Nothing in this Agreement shall

in any way restrict or limit the nature or scope of remedial actions which may be taken or be required by the State in exercising its authority under State or Federal law. Purchaser acknowledges that it is purchasing property where remedial actions may be required.

IX. PURCHASER'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS.

29. Except for claims arising out of the State of Arizona's status as a responsible party under WQARF, A.R.S. § 49-283, if applicable, and 42 U.S.C. § 9607, Purchaser hereby covenants not to sue and not to assert any claims or causes of action against the State of Arizona, its authorized officers, employees, or representatives with respect to Existing Contamination at or below the Property or under this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the WQARF pursuant to A.R.S. § 49-282 or from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, 42 U.S.C. § 9607 or 42 U.S.C. § 9613, or any other provision of law, any claim against the State of Arizona including any department, agency, or instrumentality of the State of Arizona or the United States including any department, agency, or instrumentality of the United States, under WQARF, A.R.S. § 49-285, or 42 U.S.C. § 9607, or 42 U.S.C. § 9613, related to the Property, or any claims arising out of remedial actions at the Property related to Existing Contamination, including claims based on ADEQ's oversight or implementation of such activities or approval of plans for such activities. This Covenant Not to Sue and Covenant Not to Assert Claims does not apply to acts of negligence or willful misconduct on the part of ADEQ or its contractors in performing remedial actions or engaging in other activities at the Property.

X. PARTIES BOUND/ASSIGNMENT OF COVENANT.

30. This Agreement shall apply to and be binding upon the State of Arizona, and shall apply to and be binding on Purchaser, its officers, directors, employees, and agents, successors, assignees, lessees or sublessees. Each signatory of a Party to this Agreement represents that he or

she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

31. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Purchaser under this Agreement may be assigned or transferred to any person with prior written notice to ADEQ as prescribed by A.R.S. § 49-285.01(E) and (F) and Section VII (State of Arizona's Covenant Not to Sue) of this Agreement.

XI. DOCUMENT RETENTION.

32. Purchaser agrees to retain and make available to ADEQ for inspection and copying all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least five years, following the effective date of this Agreement.

XII. DISCLAIMER.

33. This Agreement in no way constitutes a finding by the State of Arizona as to the risks to human health and the environment which may be posed by contamination at or below the Property or the Site nor constitutes any representation by the State of Arizona that the Property or the Site is fit for any particular purpose.

XIII. PAYMENT OF COSTS.

34. Purchaser has paid to ADEQ an initial fee of \$900.00 in partial payment of ADEQ's costs for the preparation and execution of this Agreement pursuant to A.R.S. § 49-285.01(H). ADEQ shall provide Purchaser with a billing for payment of ADEQ's remaining costs for the preparation and execution of this Agreement, which shall include, but not be limited to, the cost of publishing the mandatory public notice for this Agreement. All fees shall be paid to ADEQ in full prior to the execution of this Agreement.

35. If Purchaser fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the State of Arizona to enforce this Agreement or otherwise obtain compliance.

XIV. NOTICES AND SUBMISSIONS.

36. All notices or other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice was given, or on the third day after mailing, if mailed to the party to whom notice is to be given by first class mail, registered or certified return receipt, postage prepaid and properly addressed as follows:

ADEQ: Kris Kommalan, Project Manager
Superfund Programs Section
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
Fax: (602) 207-4236

PURCHASER: Sterling Network Exchange No. 2, LLC
Attention: Anthony Wanger
650 Dundee Road, Suite 370
Northbrook, Illinois 60062
Telephone: (847) 480-4000
Fax: (847) 480-0199

XV. EFFECTIVE DATE.

37. The effective date of this Agreement shall be the date upon which ADEQ executes this Agreement.

38. If Purchaser or successors-in-interest believe that the easements granted under Section VI (Easement/Notice to ADEQ and Successors in Interest) are no longer necessary to ensure compliance with this Agreement or A.R.S. Title 49, Purchaser or successors-in-interest may request in writing that ADEQ agree to terminate the easements granted, provided, however, that the easements shall continue in force unless and until the party requesting such termination receives written agreement from ADEQ to terminate such provisions.

XVII. CONTRIBUTION PROTECTION.

39. With regard to claims for contribution against Purchaser, the Parties hereto agree that, if Purchaser fully complies with the terms and conditions of this Agreement, ADEQ may agree to seek protection from contribution actions or claims as provided by A.R.S. § 49-292(C) and 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement and described in a separate, judicially approved consent decree. The matters addressed in this Agreement are all remedial actions taken or to be taken and remedial action costs incurred or to be incurred by the State of Arizona or any other person for the Property with respect to the Existing Contamination.

40. Purchaser agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the ADEQ in writing no later than 60 days prior to the initiation of such suit or claim.

XVIII. EXHIBITS.

41. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

42. Exhibit 2 shall mean the map depicting the Site.

43. Exhibit 3 shall mean the information presented to ADEQ pursuant to paragraph 8 of this Agreement.

44. There is no Exhibit 4 to this Agreement.

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45. In any case in which the state conducts remedial actions and there are unrecovered response costs at a facility for which the owner of the facility is not liable, the State may, as a condition of the agreement, impose a lien upon that facility for the unrecovered costs pursuant to A.R.S. § 49-295.

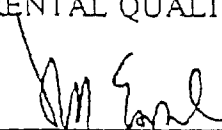
XX. PUBLIC COMMENT.

46. This Agreement shall be subject to a thirty-day public comment period, after which ADEQ may modify or decline to execute a final Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. However, if ADEQ proposes a modification to this Agreement that is unacceptable to Purchaser, Purchaser may decline to enter into a final Agreement, within thirty days of receipt of the modifications, without penalty or prejudice.

47. Subject to satisfactory performance of the obligations under this Agreement, the Purchaser is not liable to this State under Arizona Revised Statutes Title 49, Chapter 2, Article 5, for any release of a hazardous substance at the Property that exists on the date of acquisition of ownership or operation of the Property.

It is So Agreed:

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: 
Director, Waste Programs Division

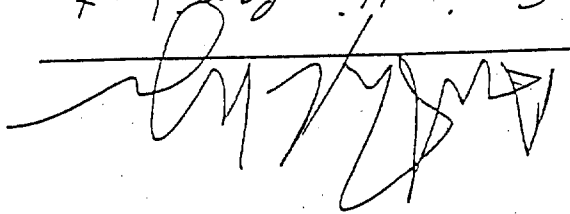
Date: 8/29/00

It is So Agreed:

STERLING NETWORK EXCHANGE
NO. 2, LLC

Date: 6-26-2000

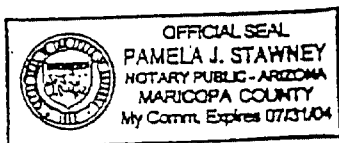
Its: Senior Vice President

By: 

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STATE OF ARIZONA)
) ss
County of MARICOPA)

The foregoing instrument was acknowledged before me this 21st day of AUGUST, 2000, by David Esposito, the Director of Waste Programs Division of the Arizona Department of Environmental Quality.



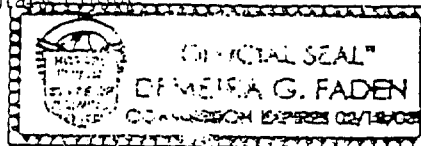
Pamela J. Stawney
Notary Public

My Commission Expires:

STATE OF Illinois)
) ss
County of Cook)

The foregoing instrument was acknowledged before me this 26th day of June, 2000, by Anthony Wanger, the Sr. Vice President of Sterling Network Exchange No. 2, LLC, a Delaware limited liability company, on behalf of the Company.

Demetria M. Faden
Notary Public



My Commission Expires:

2-18-03

Exhibit 1

LEGAL DESCRIPTION

PARCEL NO. 1:

LOT ONE (1), CITY CENTER PLAZA, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 251 OF MAPS, PAGE 7.

PARCEL NO. 2:

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP ONE (1) NORTH, RANGE THREE (3) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

FROM THE QUARTER SECTION CORNER ON THE SOUTH SIDE OF SAID SECTION 5 (FROM WHICH SAID QUARTER SECTION CORNER CITY OF PHOENIX SURVEY MONUMENT 17-34 AT THE INTERSECTION OF VAN BUREN STREET AND CENTRAL AVENUE BEARS NORTH 89 DEGREES 41 MINUTES WEST, A DISTANCE OF 2.58 FEET) RUN SOUTH 89 DEGREES 41 MINUTES EAST ALONG THE SOUTH LINE OF SAID SOUTHEAST QUARTER OF SECTION 5, A DISTANCE OF 340.01 FEET;

THENCE NORTH 0 DEGREES 04 MINUTES 15 SECONDS EAST, A DISTANCE OF 33 FEET TO THE INTERSECTION OF THE WEST LINE OF FIRST STREET WITH THE ORIGINAL NORTH LINE OF VAN BUREN STREET, SAID POINT BEING ALSO THE SOUTHEAST CORNER OF LOT TWELVE (12), BLOCK ONE (1), LOUNT TRACT, CHURCHILL ADDITION, ACCORDING TO AN UNRECORDED PLAT SOMETIMES USED AND REFERRED TO IN DESCRIBING PROPERTY IN SAID LOUNT TRACT;

THENCE CONTINUING NORTH 0 DEGREES 04 MINUTES 15 SECONDS EAST ALONG THE WEST LINE OF FIRST STREET, A DISTANCE OF 299.76 FEET TO THE INTERSECTION OF THE WEST LINE OF FIRST STREET WITH THE SOUTH LINE OF POLK STREET, SAID POINT BEING THE NORTHEAST CORNER OF LOT SEVEN (7), BLOCK 1 OF AFOREMENTIONED LOUNT TRACT;

Continued on next page

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LEGAL DESCRIPTION CONTINUED

THENCE NORTH 89 DEGREES 41 MINUTES 15 SECONDS WEST ALONG THE SOUTH LINE OF POLK STREET, A DISTANCE OF 135.47 FEET TO THE NORTHWEST CORNER OF AFORESAID LOT 7, BEING ALSO A POINT ON THE EAST LINE OF A 20 FOOT ALLEY RUNNING NORTH AND SOUTH THROUGH THE CENTER OF AFORESAID BLOCK 1;

THENCE SOUTH 0 DEGREES 03 MINUTES 45 SECONDS WEST ALONG SAID 20 FOOT ALLEY 299.82 FEET TO A POINT ON THE ORIGINAL NORTH LINE OF VAN BUREN STREET, SAID POINT BEING IDENTICAL WITH THE SOUTHWEST CORNER OF AFORESAID LOT 12;

THENCE SOUTH 89 DEGREES 41 MINUTES EAST, A DISTANCE OF 135.41 FEET TO THE POINT OF BEGINNING;

EXCEPT THE SOUTH 7.75 FEET THEREOF FOR WIDENING VAN BUREN STREET.

SUCH PROPERTY BEING COMMONLY KNOWN AND REFERRED TO AS LOTS 7, 8, 9, 10, 11 AND 12 OF BLOCK 1, CHURCHILL'S ADDITION TO THE CITY OF PHOENIX.

PARCEL NO. 3:

THAT CERTAIN NORTH-SOUTH ALLEY LYING IN THE BLOCK SOMETIMES KNOWN AS BLOCK 1, CHURCHILL ADDITION, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 1 OF MAPS, PAGE 15, WHICH ALLEY IS BOUND ON THE NORTH BY THE EASTERLY PROLONGATION OF THE NORTH LINE OF LOT ONE (1), CITY CENTER PLAZA, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 251 OF MAPS, PAGE 7 AND ON THE SOUTH BY THE EASTERLY PROLONGATION OF THE SOUTH LINE OF SAID LOT 1 AND WHICH SAID BLOCK 1 IS IN THE SOUTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP ONE (1) NORTH, RANGE THREE (3) EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND IS BOUND BY VAN BUREN STREET, POLK STREET, FIRST STREET AND CENTRAL AVENUE AS ABANDONED BY RESOLUTION NO. 18210 RECORDED JULY 27, 1993 AT RECORDERS NO. 93-489911.

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Exhibit 3 to Prospective Purchaser Agreement by and between the Arizona Department of Environmental Quality on behalf of the State of Arizona and Sterling Network Exchange No. 2, LLC.

1. "Phase I - Environmental Site Assessment for Northeast Corner of Central Avenue and Van Buren Street Phoenix, Arizona" dated April 27, 1992 prepared by Industrial Compliance.
2. "Phase I and II Environmental Site Assessment Bank One Parking Lot Northeast Corner of Central Avenue and Van Buren Street" dated May 25, 2000 prepared by Geotechnical and Environmental Consultants, Inc.

FILED	LODGED
RECEIVED	COPY
JAN 10 2002	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	Z. DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona *ex rel.* Jacqueline)
E. Schafer, Director, Arizona)
Department of Environmental)
Quality,)

Plaintiff,)

v.)

Sterling Network Exchange, LLC,)
a Delaware limited liability)
company,)

Defendant.)

No. CIV 01-0360-PHX-SLV

**CONSENT DECREE BETWEEN
THE STATE OF ARIZONA AND
STERLING NETWORK
EXCHANGE, LLC**

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I. RECITALS

1. WHEREAS, the State of Arizona, on its own behalf and on behalf of the Director of the Arizona Department of Environmental Quality (the State), intends to file a Complaint, in conjunction with this Consent Decree under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 (CERCLA) and the Water Quality Assurance Revolving Fund (WQARF) A.R.S. § 49-281, *et seq.* seeking relief in the form of, *inter alia*, a declaratory judgment to ensure funding or performance of a remedial action in response to alleged releases and alleged threats of releases of hazardous substances into the environment from the Former Phoenix Newspaper Building at 120 East Van Buren Street, Phoenix, Arizona (the Property) located within the Motorola, Inc. 52nd Street Superfund Site (the Site). The legal description of the Property is attached as Exhibit 1 hereto. The Property is adjacent to a parking lot located on the northeast corner of Central Avenue and Van Buren Street in Phoenix, Arizona that is the subject of a Consent Decree being filed concurrently herewith between the State and Sterling Network Exchange No. 2, LLC (Sterling No. 2);

2. WHEREAS, effective November 3, 1989, the United States Environmental Protection Agency (EPA) and the Water Quality Assurance Revolving Fund (WQARF) A.R.S. § 49-281, *et seq.*, listed Motorola 52nd Street Superfund on the National Priorities

List (NPL) pursuant to CERCLA, by publication in the Federal Register on October 4, 1989 (54 Fed. Reg. 41000);

3. WHEREAS, pursuant to CERCLA § 104(d)(1), 42 U.S.C. § 9604(d)(1), EPA has designated ADEQ as the lead agency with authority to plan and implement certain response actions under the National Contingency Plan (NCP), 40 C.F.R. Part 300, including enforcement activities related to removal and remedial actions at the Site;

4. WHEREAS, the State alleges that a release or threat of release of hazardous substances as defined in A.R.S. § 49-201(18) has occurred at the Property, that it is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and A.R.S. § 49-281(6) and that Sterling Network Exchange, LLC (Sterling) is a "person" pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a) and A.R.S. 49-201(26);

5. WHEREAS, A.R.S. § 49-285.01 authorizes ADEQ to provide to a prospective purchaser of a facility a written release and a covenant not to sue and to seek an order of this Court awarding the prospective purchaser protection from contribution claims pursuant to CERCLA and WQARF where: (1) the extent of contamination at the facility has been reasonably identified; (2) the prospective purchaser is not liable for a release or threatened release of a hazardous substance at the facility; (3) the proposed development will not exacerbate existing contamination; and (4) the settlement will provide a substantial public benefit.

6. WHEREAS, the State has undertaken activities to determine the nature and extent of the release and the threat of release of hazardous substances at the Site;

7. WHEREAS, Sterling qualifies as a "prospective purchaser" of the Property in accordance with the criteria set forth in A.R.S. § 49-285.01(B);

8. WHEREAS, Sterling's proposed redevelopment of the Property will not exacerbate Existing Contamination and will provide a public benefit through the productive reuse of empty commercial property;

9. WHEREAS, the State and Sterling are authorized to enter into this settlement regarding Covered Matters as defined in this Consent Decree;

10. WHEREAS, upon judicial approval of this Consent Decree, Sterling, as defined herein, will be entitled to contribution protection pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613 and A.R.S. § 49-292(C);

11. WHEREAS, the State and Sterling desire to establish certain rights and obligations between themselves concerning claims that have arisen, or might arise, or be asserted in the future in connection with or relating to the Property, including those claims which were or could have been asserted in this action;

12. WHEREAS, the State and Sterling do not admit and retain the right to controvert the validity of the recitations contained in this Consent Decree in any contemporaneous or subsequent proceedings (other than proceedings related to the validity, implementation, or enforcement of this Consent Decree);

13. WHEREAS, the State and Sterling agree that settlement of this matter and entry of this Consent Decree is made in good faith, without any admission of any liability for any purpose;

14. WHEREAS, Sterling denies all allegations in the Complaint not heretofore admitted;

15. WHEREAS, the State and Sterling agree that nothing herein nor any action taken hereunder, including the payment of funds, shall be taken or construed as an admission of liability on any claim or cause of action, nor shall it be taken or construed as a waiver of any defense relating to any of the claims and causes of action asserted in this action;

16. WHEREAS, the State and Sterling agree and the Court finds that entry of this Consent Decree is in the public interest, minimizes litigation, and is reasonable, fair and consistent in light of the purposes of CERCLA and WQARF;

17. WHEREAS, the State and Sterling, having consented to the issuance and entry of this Consent Decree, agree to be bound by the terms herein; and,

18. WHEREAS, each undersigned representative of the State and Sterling to this Consent Decree certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such party to this Document.

NOW, THEREFORE, IT IS ORDERED BY THE COURT AND AGREED TO BY THE PARTIES AS FOLLOWS:

II. JURISDICTION

19. This Court has jurisdiction over the subject matter of this action and supplemental jurisdiction over State law claims pursuant to 28 U.S.C. §§ 1331, 1345 and

1367; §§ 107 and 113(b) of CERCLA, 42 U.S.C., 42 U.S.C. §§ 9607 and 9613(b); A.R.S. § 49-292 and personal jurisdiction over all parties in this action. Solely for the purposes of this Consent Decree and the underlying complaint, Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. INCORPORATION OF RECITALS

20. The recitals as set forth herein are hereby incorporated into the Consent Decree and agreed to by the Parties.

IV. PARTIES

21. The parties to this Consent Decree are the State of Arizona and Sterling Network Exchange, LLC (Sterling).

V. PARTIES BOUND/ASSIGNMENT OF COVENANT

22. This Consent Decree shall apply to and be binding upon the State of Arizona and Sterling.

23. To the maximum extent permitted by law and with no warranty, guarantee or indemnification by the State of Arizona that the protections set forth in this Consent Decree are legally assignable, and notwithstanding any other provision of this Consent Decree, the State of Arizona does not object to the assignment of this Consent Decree if the assignee qualifies pursuant to A.R.S. § 49-285.01 (A) and (B). Sterling must provide written notice to ADEQ at least fifteen business days prior to the date of transfer,

sale or assignment of the Property. All rights, benefits and obligations conferred upon Sterling under this Consent Decree are assumed by the assignee upon the transfer, sale or assignment as prescribed by A.R.S. § 49-285. 01 (E) and (F) and Section XI (Covenant Not to Sue).

24. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits of this Consent Decree, except as the State of Arizona and the assignor agree otherwise and accordingly modify this Consent Decree in writing. Moreover, prior to or simultaneous with any transfer of or assignment of interest in the Property, the transferee or assignee must consent in writing to be bound by the terms of this Consent Decree.

VI. BINDING EFFECT

25. This Consent Decree shall apply to and be binding upon the Parties, their successors, agents and assigns. Any change in ownership or corporate status of a Party including, but not limited to, any transfer of assets or real or personal property shall in no way alter its responsibilities under this Consent Decree. The terms of this Consent Decree are mutually enforceable by the Parties to this Consent Decree. Sterling hereby agrees to provide notice of this Consent Decree and the obligations contained herein to any successors and assigns.

VII. PURPOSE

26. The purposes of this Consent Decree are as follows:

- A. To protect the public health and welfare and the environment;
- B. To resolve the claims between the State and Sterling regarding Covered Matters as defined herein;
- C. To obligate Sterling to provide a substantial public benefit pursuant to A.R.S. § 49-285.01(A)(4)(c), to-wit: the renovation and retrofitting of a currently vacant commercial building on the Property for use by data and telephone provider tenants;
- D. To obligate Sterling to perform all remedial measures specified in the Prospective Purchaser Agreement in compliance with the WQARF program statutes and rules, and other applicable provisions of A.R.S. Title 49, including, but not limited to A.R.S. §§ 49-151 and 49-152; and
- E. To protect Sterling against claims for contribution by any person regarding Covered Matters as provided herein.

27. The intent of the Parties is that, unless otherwise provided by this Consent Decree, Sterling will receive a covenant not to sue and contribution protection under CERCLA and WQARF to the extent allowed by law, so long as Sterling complies with this Consent Decree.

28. The State and Sterling agree that settlement without further litigation and without the admission or adjudication of any issue of fact or law is the most appropriate means of resolving this action with respect to Sterling and is in the public interest.

29. Sterling recognizes that while this Consent Decree may resolve the issue of its liability for Covered Matters, it does not resolve its liability, if any, for matters not

covered by this Consent Decree. The State expressly reserves the right to bring any claim against Sterling, and/or any Successor Party for matters not covered by this Consent Decree and does not release Sterling from liability, if any, for any matters that do not constitute Covered Matters within the meaning of this Consent Decree.

VIII. DEFINITIONS

30. Unless otherwise expressly defined herein, the terms used in this Agreement are as defined under those statutes establishing the Water Quality Assurance Revolving Fund (WQARF) (A.R.S. § 49-281 *et seq.*); and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. § 9601 *et seq.*). The definition under WQARF shall control where conflicting definitions exist for a term used in both WQARF and CERCLA.

31. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State of Arizona.

32. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499, 101 Stat. 1613 (1986).

33. "Complaint" shall mean the lawsuit filed by the State in the United States District Court for the District of Arizona filed contemporaneously with this Consent Decree.

34. "Consent Decree" shall mean this Agreement, including any Appendices, modifications, or additions made thereto.

35. "Covered Matters" shall mean any civil liability Sterling may now or hereafter have under CERCLA or WQARF for Existing Contamination as of the date of this Consent Decree, including any actions, whether judicial or administrative, by the State or any other person, related to such Existing Contamination. Covered Matters shall not include:

A. Claims based on failure by Sterling to comply with its obligations under this Consent Decree;

B. Civil liability arising out of the treatment, storage, transportation, or placement on or into the ground of hazardous substances, pollutants or contaminants at locations other than the Property;

C. Future civil liability arising from conditions that are unknown to the State at the time this Consent Decree is lodged. The Parties acknowledge that the conditions known include:

i. That the commercial building located on the Property consists of multiple stories, including a basement and a sub-basement containing drywells from which a release of hazardous substances into the environment occurred;

ii. Sufficient information has been provided by Sterling Network Exchange LLC and Sterling No. 2 to ADEQ that reasonably identifies the nature and extent of contamination existing on or emanating from the Property; and

iii. Those conditions as described in documents in the possession or control of the State as of the effective date of this Consent Decree.

D. Civil liability for future releases or threatened releases of hazardous substances, pollutants or contaminants by Sterling, or arrangement for disposal by Sterling, of hazardous substances, pollutants, or contaminants after the Effective Date of this Consent Decree;

E. Civil liability for exacerbation by Sterling, of Existing Contamination at or beneath the Site;

F. Civil liability for future violations of local, state, or federal statutes or regulations;

G. Criminal liability;

H. Natural resource damages at or related to the Site.

36. "Day" shall mean a calendar day; however, should a deadline fall on a Saturday, Sunday or a state or federal holiday, the deadline will be construed to continue to the next day that is not a Saturday, Sunday, or state or federal holiday.

37. "EPA" shall mean the United States Environmental Protection Agency.

38. "Existing Contamination" shall mean the release or threat of release of any hazardous substances, as defined by A.R.S. § 49-281(8), present or existing on, under, in, into, at, or from the Property as of the Effective Date of this Consent Decree.

39. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an uppercase letter.

40. "Parties" shall mean the State of Arizona and Sterling (each individually referred to as a "Party").

41. "Plaintiff" shall mean the State of Arizona.

42. "Property" shall mean the former Phoenix Newspapers Building located at 120 East Van Buren Street, Phoenix, Arizona, as more fully described in Exhibit 1 to this Consent Decree (Prospective Purchaser Agreement).

43. "Prospective Purchaser Agreement (PPA)" shall mean the agreement entered into by the Parties on April 3, 2000 and attached hereto as Exhibit 1.

44. "Remedial actions" means actions defined in A.R.S. § 49-281(12).

45. "Site" as defined by A.R.S. § 49-281(14), shall mean the Motorola, Inc. (52nd Street Plant) Superfund Site, located in Phoenix, Maricopa County, Arizona, and depicted generally on the map included in Exhibit 1.

46. "State" shall mean the State of Arizona, including the Department of Environmental Quality, and Jacqueline E. Schafer, Director of the Arizona Department of Environmental Quality.

47. "Sterling" shall mean Sterling Network Exchange, LLC, a Delaware limited liability company.

48. "WQARF" shall mean the Arizona Water Quality Assurance Revolving Fund, A.R.S. Title 49, Chapter 2, Article 5, as amended.

IX. CERTIFICATION OF STERLING

49. Sterling hereby certifies that it did not cause or contribute to the Existing Contamination or otherwise cause or contribute to a release or threatened release of a hazardous substance at the Property before Sterling acquired title. Sterling further certifies that it is not affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance at or from the Property through any familial relationship, any corporate or contractual relationship, other than a contract to protect a security interest or to purchase the Property. Based upon the representations by Sterling, and ADEQ's reliance upon these representations, Sterling represents that it is not currently liable for an existing or threatened release of a hazardous substance at the Property.

50. Sterling further certifies that, to the best of its knowledge and belief, it has not altered, mutilated, discarded, or otherwise disposed of any records, documents, or other information regarding Existing Contamination, except that this certification does not include drafts or copies or other documents, including but not limited to message slips, containing information that Sterling already submitted to the State without alteration. Sterling certifies that, prior to the title acquisition of the Property by Sterling on November 12, 1999, it was not an owner, operator, or trustee of the Property or any portion thereof. Sterling also certifies that to the best of its knowledge and belief, it has fully and accurately disclosed to ADEQ the information in its possession or control which relates to the environmental conditions at the Property. If Sterling failed to

provide ADEQ with all of the information in its possession or control regarding the environmental conditions of the Property, or if the information supplied by Sterling and relied on by ADEQ is inaccurate due to the intentional, willful, or negligent acts or omissions of Sterling and/or its agents or contractors, or if Sterling owned or operated the Property prior to the title acquisition by Sterling on November 12, 1999, then the Covenant Not to Sue in Section XI and the Contribution Protection in Section XIII shall not be effective, and ADEQ reserves all rights it may have against Sterling. If the unprovided or inaccurate information is provided or corrected by Sterling following the execution of this Consent Decree, then the State may, in its sole but reasonable discretion, accept such information as timely provided and waive the provision respecting the ineffectiveness of the Contribution Protection and Covenant Not to Sue. The waiver by the State shall not be withheld in a manner that is arbitrary or capricious.

X. SPECIFIC OBLIGATIONS OF STERLING

51. In addition to its obligations under this Consent Decree, Sterling agrees to comply with and/or perform all the duties and responsibilities set forth in the Prospective Purchaser Agreement.

XI. COVENANT NOT TO SUE

52. Upon the effective date of this Consent Decree, the State covenants not to sue Sterling under WQARF, or Section 107 of CERCLA, 43 U.S.C. § 9607, with respect to Covered Matters. This Covenant Not to Sue shall take effect upon entry of this Consent Decree by the Court. This Covenant Not to Sue is limited to Covered Matters

and does not limit the State's right to pursue any other claims relating to or arising out of any other matters whatsoever against Sterling. This Covenant Not to Sue is conditioned upon the satisfactory performance by Sterling of its obligations under this Consent Decree.

53. Upon the effective date of this Consent Decree, Sterling hereby covenants not to sue and not to assert any claims or causes of action against the State of Arizona, its authorized officers, employees or representatives with respect to Covered Matters under this Consent Decree, including but not limited to (1) any direct or indirect claims for reimbursement from the WQARF or any other provision of law, (2) any claim against the State of Arizona including any department, agency, or instrumentality of the State of Arizona under WQARF, A.R.S. § 49-285, or CERCLA Section 107, 42 U.S.C. § 9607, or Section 113, 42 U.S.C. § 9613, related to the Property, or (3) any claims arising out of remedial actions at the Property related to Existing Contamination, including claims based on ADEQ's oversight or implementation of such activities or approval of plans for such activities. This covenant does not preclude Sterling from suing the State for failure to comply with the terms in this Consent Decree. Except as otherwise provided in this Consent Decree, Sterling may assert any and all causes of action it has or hereafter may have against any other person.

XII. RESERVATION OF RIGHTS

54. The covenant not to sue set forth in Section XI above does not pertain to any matters other than those expressly specified in that Section. The State of Arizona

reserves all rights against Sterling with respect to all other matters, including but not limited to, the following:

(a) claims, if any, based on a failure by Sterling to meet a requirement of this Consent Decree;

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants at or from the Property caused or contributed to by Sterling, its successors, assignees, lessees, or sub-lessees;

(c) any liability resulting from exacerbation by Sterling, its successors, assignees, lessees or sub-lessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release at the Property after the Effective Date of this Consent Decree of hazardous substances, pollutants or contaminants not within the definition of Existing Contamination;

(e) criminal liability;

(f) civil liability for past or future violations of local, State or federal laws or regulations by Sterling.

55. Nothing in this Consent Decree is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Arizona may have against any person, firm, corporation or other entity not a party to this Consent Decree or not otherwise entitled to the benefits of this Consent Decree pursuant to Section V. The State expressly

reserves the right to bring any appropriate action against persons and entities who are not parties to this Consent Decree.

56. Nothing in this Consent Decree is intended to limit the right of the State of Arizona to undertake remedial actions at the Property or to seek to compel persons other than Sterling to perform or pay for remedial actions at the Property. Nothing in this Consent Decree shall in any way restrict the nature or scope of remedial actions which may be taken or be required by the State in exercising its authority under State or federal law. Sterling acknowledges that it is purchasing property where remedial actions may be required. Sterling shall exercise due care at the Property with respect to Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations related to proper management and control of the Existing Contamination. Sterling agrees to cooperate fully with ADEQ in the implementation of remedial actions at the Property and further agrees not to interfere with such remedial actions. ADEQ agrees, consistent with its responsibilities under applicable law, to use all reasonable efforts to minimize any interference with Sterling's operations by such entry and remedial actions. Sterling represents that it shall not, and its proposed development will not, exacerbate or contribute to Existing Contamination, create additional contamination by an act or omission, or cause the Existing Contamination to present a substantial health risk to the public. In the event Sterling becomes aware of any action or occurrence which causes or threatens a release of hazardous substances at or from the Property that constitutes an emergency situation or may present an immediate threat to public health

or the environment, Sterling shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify ADEQ of such release or threatened release.

XIII. CONTRIBUTION PROTECTION

57. With regard to claims for contribution against Sterling, the Parties hereto agree that, upon the Court's entry of this Consent Decree, Sterling shall be protected from contribution actions or claims and cost recovery actions or claims as provided by WQARF, A.R.S. § 49-292(C), and CERCLA § 113(f)(2), 42 U.S.C. § 9613(f)(2), for Covered Matters. Should this Consent Decree be assigned pursuant to Section V, the State of Arizona does not warrant, guarantee, or indemnify that the protections afforded herein are legally assignable.

XIV. EASEMENT/NOTICE TO ADEQ AND SUCCESSORS IN INTEREST

58. Sterling shall grant ADEQ and its authorized representatives an easement to provide access to the Property for purposes of ensuring compliance with this Consent Decree and/or the Prospective Purchaser Agreement, or for remedial actions authorized pursuant to A.R.S. Title 49, Chapter 2, Article 5 in connection with contamination of the Site as of the date of acquisition of ownership of the Property. ADEQ agrees to provide reasonable notice to Sterling of the timing of remedial actions to be undertaken at the Property.

59. Sterling and any subsequent purchaser of the Property shall provide written notice to ADEQ of any sale, assignment or other transfer of the Property at least 15 business days before the date of the transfer.

60. Sterling shall ensure that assignees, successors in interest, lessees, and sub-lessees of the Property shall provide ADEQ with access to the portion of the Property within their possession and control, for the purposes specified in Paragraph 58. Sterling shall ensure that a copy of the Prospective Purchaser Agreement is provided to any current or subsequent lessee, or sub-lessee or assignee, or purchaser of the Property as of the effective date of the Prospective Purchaser Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section and Section V (Parties Bound/Assignment of Covenant) of the Consent Decree.

61. On assignment, the Assignee assumes the obligations and the benefits of the Prospective Purchaser Agreement and Consent Decree. All Assignees must meet the requirements of A.R.S. § 49-285.01(A) and (B). Unless the Assignor has breached the Prospective Purchaser Agreement or Consent Decree, the Assignor retains the benefits of the Prospective Purchaser Agreement and Consent Decree.

XV. TERMINATION OF EASEMENT

62. If Sterling or other parties bound by this Consent Decree pursuant to Section V believe that the easements granted under Section XIV (Easement/Notice to ADEQ and Successors in Interest) are no longer necessary to ensure compliance with this

Agreement or A.R.S. Title 49, Sterling or such parties may request in writing that ADEQ terminate the easements, provided, however, that the easements shall continue in force unless and until the party requesting such termination receives written agreement from ADEQ to terminate such provisions, which agreement shall not be unreasonably withheld.

XVI. OTHER CLAIMS

63. Nothing in this Consent Decree shall constitute or be construed as providing any release, covenant not to sue, contribution protection or dismissal of any claim to any person not a Party to this Consent Decree, except as specifically set forth in Section V.

XVII. RIGHTS IN EVENT OF FAILURE TO OBTAIN COURT APPROVAL

64. If the State files a motion for entry of the Consent Decree after considering public comment pursuant to Section XVIII herein and the District Court approves this Consent Decree in the exact form in which it is presented by the Parties, neither of the Parties may appeal the District Court's decision. If the District Court, or an appellate court if the District Court's approval is appealed, does not approve this Consent Decree, then this Consent Decree shall be null and void. If a non-party appeals or petitions and an appellate court takes any action that has the effect of reversing the District Court's approval of this Consent Decree, the Consent Decree shall be null and void. If this Consent Decree is declared null and void under this Section, then the Parties agree to renegotiate this Consent Decree in an effort to reach an agreement that will be approved

by the District Court. If this Consent Decree is not approved, the Court's decision shall have no effect on the Prospective Purchaser Agreement, and the complaint filed in the District Court shall be dismissed without prejudice.

XVIII. FILING AND OPPORTUNITY FOR PUBLIC COMMENT

65. This Consent Decree shall be filed with the Court for a period of not less than 30 days to provide an opportunity for public review and comment before the Court enters the Consent Decree as a final judgment. Within fourteen days of filing the Consent Decree, Sterling shall publish at its own expense a notice of its availability for review and comment two times in the Arizona Business Gazette and provide notice to any other interested person. All comments shall be submitted to the Court and to both Parties. The public review and comment period shall run for 30 days beginning on the date of the last publication of the notice of availability for review and comment. The State reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, inadequate, or is not in the public interest.

XIX. SEVERABILITY CLAUSE

66. If any provision of this Consent Decree is declared invalid or unenforceable, or is not approved in the exact form in which it is presented by the Parties, the entire Consent Decree shall be null and void. To this end, the provisions of the Consent Decree are not severable.

XX. NOTICES AND SUBMISSIONS

67. The person designated to receive all correspondence and notices for Sterling is as follows:

Name: Sterling Network Exchange, LLC
Attention: Anthony Wanger
Mailing Address: 650 Dundee Road, Suite 370
Northbrook, Illinois 60062
Telephone: (847) 480-4000
Facsimile: (847) 480-0199

In addition, copies of all correspondence and notices shall be sent to Sterling's attorney:

Name: Robert Kramer
Mailing Address: Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, AZ 85012
Telephone: (602) 916-5464
Facsimile: (602) 916-5664

The key contact and person designated to receive all correspondence for ADEQ is:

Name: Kris Kommalan
Mailing Address: Superfund Programs Section
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
Facsimile: (602) 207-4236

XXI. DOCUMENT RETENTION

68. Sterling agrees to retain and make available to ADEQ for inspection and copying all business and operating records, contracts, site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the Effective Date of this Consent Decree. Prior to the destruction of said records described

above, Sterling will offer the physical control and possession of said records to ADEQ. The retention policy is limited in effect to remedial actions regarding Existing Contamination at the Property, and does not apply to day-to-day operations of the Property.

XXII. EFFECTIVE DATE

69. The Effective Date of this Consent Decree shall be the date of entry by the Court.

XXIII. RETENTION OF JURISDICTION

70. This Court, until it terminates this Consent Decree, retains jurisdiction over both the subject matter of this Consent Decree and the Parties for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms.

XXIV. SECTION HEADINGS

71. The section headings set forth in this Consent Decree are included for convenience of reference only and shall be disregarded in the construction and interpretation of any of the provisions of this Consent Decree.

///

XXV. SIGNATORIES

72. Each undersigned representative of the Parties certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

73. Sterling hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless:

(a) the State notifies Sterling in writing that it no longer supports entry of the Consent Decree; or

(b) the Court declines to approve the Consent Decree.

XXVI. PAYMENT OF COSTS

74. Sterling agrees to pay ADEQ in advance for all anticipated fees associated with filing the Complaint in this matter. Sterling also agrees to pay ADEQ the costs incurred in preparing and executing this Consent Decree and all accompanying documents. ADEQ shall timely provide Sterling with a statement that Sterling shall pay no more than 15 days after the Court's entry of this Consent Decree.

AS TO THE STATE:

The State of Arizona

By: The Arizona Department of Environmental Quality

By: 

David Esposito, Division Director
Office of Waste Programs
Arizona Department of Environmental Quality

Date: 2/15/01

AS TO THE DEFENDANT:

Sterling Network Exchange, LLC, a Delaware
limited liability company

By: Sterling Network Exchange, LLC
[Signature]

Its: MEMBER

Date: 2/16/01

IT IS SO ORDERED this _____ day of _____, 2001.

Judge, United States District Court

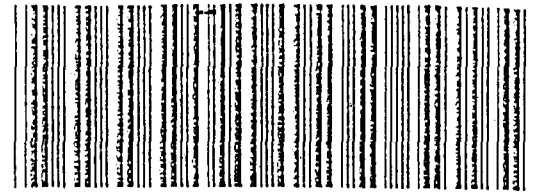
EXHIBIT 1

EXHIBIT 1
PROSPECTIVE PURCHASER AGREEMENT

#203909

RETURN TO
FLEMING ATT. SERVICE
253-1155

When Recorded, Hold for Pickup by:
Robert J. Kramer
Fennemore Craig
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

00-0266337 04/07/00 04:45

10RHH 1 OF 1

PROSPECTIVE PURCHASER AGREEMENT

I. INTRODUCTION.

This Prospective Purchaser Agreement ("Agreement") is made and entered into by and between the Arizona Department of Environmental Quality ("ADEQ" or "the Department") on behalf of the State of Arizona and Sterling Network Exchange, LLC ("Purchaser") collectively, the "Parties".

ADEQ enters into this Agreement pursuant to A.R.S. § 49-285.01 and A.R.S. § 49-292.

Purchaser is a Delaware limited liability company, the address of which is 650 Dundee Road, Suite 370, Northbrook, Illinois 60062. The real property that is the subject of this agreement is commonly known by its street address of 120 East Van Buren Street in Phoenix, Arizona, and is bounded by Polk Street, Second Street, Van Buren Street and First Street (the "Property").

The Parties agree to undertake all actions required by the terms and conditions of this Agreement and A.R.S. § 49-285.01 and A.R.S. § 49-292. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Section VIII (Reservation of Rights by State of Arizona), the potential liability of Purchaser for the Existing Contamination at the Property which could otherwise result from Purchaser becoming the owner of the Property.

The Parties agree that Purchaser's entry into this Agreement, and the actions undertaken by Purchaser in accordance with the Agreement, do not constitute an admission of any liability by Purchaser.

The resolution of this potential liability, in exchange for provision by Purchaser to the State of Arizona of a substantial public benefit, is in the public interest.

II. DEFINITIONS.

1. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in Water Quality Assurance Revolving Fund ("WQARF"), Arizona Revised Statutes Title 49, Chapter 2, Article 5, or the Comprehensive Environmental Response Compensation and Liability Act; 42 U.S.C. §§ 9601 *et seq.* ("CERCLA") or in rules or regulations promulgated under WQARF or CERCLA shall have the meaning assigned to them in WQARF or CERCLA respectively or in such regulations, including any amendments thereto. In the event of a conflict, definitions under WQARF shall apply.

2. "ADEQ" shall mean the Arizona Department of Environmental Quality and any successor departments or agencies of the State of Arizona.

3. "Existing Contamination" shall mean any hazardous substances as defined by A.R.S. § 49-201(18) present or existing on or under the Property as of the effective date of this Agreement.

4. "Parties" shall mean ADEQ and Purchaser.

5. "Property" shall mean the Facility as defined by A.R.S. § 49-281(6) which fits the legal description in Exhibit 1 of this Agreement.

6. "Purchaser" shall mean Sterling Network Exchange, L.L.C., a Delaware limited liability company.

7. "Site" as defined by A.R.S. § 49-281(14) shall mean the Motorola/52nd Street Site, located in Phoenix, Maricopa County, Arizona, and depicted generally on the map attached as

Exhibit 2. The Site shall include the Property, and all areas where hazardous substances have come to be located.

III. STATEMENT OF FACTS.

8. The Site is identified on the WQARF Registry as an area where hazardous substances have been detected in the environment due to releases of hazardous substances from the Property and other sources located within the boundaries of the Site and ADEQ has been provided sufficient information set forth in Exhibit 3 to reasonably identify the extent of the contamination at the Property.

IV. RESPONSIBILITIES OF PURCHASER

9. Purchaser represents that Purchaser did not cause or contribute to the Existing Contamination or otherwise cause or contribute to a Release or Threatened Release of a hazardous substance at the Property or the Site before Purchaser acquired title to the Property.

10. Purchaser represents that it is not affiliated with any other person who is a party responsible for the release or threatened release of a hazardous substance at the Property or the Site through any familial relationship, any corporate or contractual relationship, other than a contract to protect a security interest.

11. Purchaser represents that Purchaser's involvement with the Property and the Site has been limited to the following: (i) Property tours by representatives of Purchaser; and (ii) Engagement of Geotechnical and Environmental Consultants, Inc. ("GEC") to perform standard pre-acquisition due diligence tasks related to the Property. The work by GEC related to the Property consisted of document and records review, Property tour, and observation of site reconnaissance done by LFR-Levine Fricke ("LFR") as part of the "Phase I Environmental Site Assessment of Former Phoenix Newspapers Building, 120 East Van Buren, Phoenix, Arizona" prepared by LFR dated July 2, 1999 (See Item 2 in Exhibit 3). Based upon the representations by Purchaser, and ADEQ's reliance upon these representations, Purchaser represents that it is not currently liable for an existing or threatened release of a hazardous substance at the Property.

12. Purchaser bears the burden of proving that any hazardous substance existed on the Property as a result of releases of the hazardous substance before the date of acquisition of ownership or operation of the Property.

13. Purchaser shall exercise due care at the Property with respect to Existing Contamination and shall comply with all applicable local, state, and federal statutes and regulations. Purchaser recognizes that the implementation of remedial actions at the Property by ADEQ or its contractors may interfere with Purchaser's use of the Property, and may require closure of its operations or a part thereof. Purchaser agrees to cooperate fully with ADEQ or its contractors in the implementation of remedial actions at the Site and further agrees not to interfere with such remedial actions. ADEQ and its contractors agree, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with Purchaser's operations by such entry and remedial actions.

14. Purchaser represents that it shall not exacerbate or contribute to Existing Contamination, or cause the Existing Contamination to present a substantial health risk to the public. In the event Purchaser becomes aware of any action or occurrence which causes or threatens a release of hazardous substances at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify ADEQ of such release or threatened release.

15. Purchaser agrees to perform those activities set forth in Section V (Description of Substantial Public Benefit).

16. For the purposes of this Agreement, ADEQ relies on the representations of Purchaser. This Agreement is voidable by ADEQ in the event of misrepresentations by Purchaser.

V. DESCRIPTION OF SUBSTANTIAL PUBLIC BENEFIT.

17. Purchaser agrees to provide the following substantial public benefit:

Productive reuse of a vacant or abandoned industrial commercial facility pursuant to A.R.S. § 49-285.04(A)(4)(c), and benefits attendant thereto. More specifically, Purchaser intends to renovate and retrofit the currently vacant building on the Property for use and occupancy by data and telephone provider tenants. Once renovated, the tenants will invest additional capital in the building by installing high technology equipment to send, receive, route, monitor and otherwise distribute data signals and packets. These tenants will create jobs for themselves and for surrounding businesses.

18. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to A.R.S. § 44-1201.

19. Purchaser agrees to perform all remedial measures in compliance with the WQARF program statutes and rules, and other applicable provisions of A.R.S. Title 49, including, but not limited to, A.R.S. § 49-151 and § 49-152, and if pursuant to a consent judgment, under the Department's supervision, the work to be performed in the Statement of Work attached as Exhibit 4. The parties agree that there is no Exhibit 4 to this Agreement.

VI. EASEMENT/NOTICE TO ADEQ AND SUCCESSORS IN INTEREST.

20. Purchaser shall grant ADEQ and its authorized representatives easements to provide access to the Property for purposes of ensuring compliance with this Agreement, or for remedial actions in response to contamination at the Property as of the date of acquisition of ownership or operation of the Property. ADEQ agrees to provide reasonable notice to Purchaser of the timing of remedial measures to be undertaken at the Property.

21. Within 30 days from the effective date of this Agreement, Purchaser shall record a certified copy of this Agreement with the County Recorder's Office in the county in which the Property is located. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a notice stating that the Property is subject to this Agreement. Purchaser

shall send a copy of these documents to the persons listed in Section XIV(Notices and Submissions).

22. Purchaser and any subsequent purchaser of the Property shall provide written notice to ADEQ of any sale, assignment or other transfer of the Property at least fifteen (15) business days before the date of the transfer.

23. Purchaser shall ensure that assignees, successors in interest, lessees, and sublessees, of the Property shall provide the same access and cooperation. Purchaser shall ensure that a copy of this Agreement is provided to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall ensure that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property are consistent with this Section, and Section X (Parties Bound/Transfer of Covenant) of the Agreement.

24. On assignment, the Assignee assumes the obligations and the benefits of the Agreement. Moreover, prior to or simultaneous with any transfer of the Property, the Transferee as a part of the notice required by this section must consent in writing to be bound by the terms of this Agreement. All Assignees must meet the requirements of A.R.S. § 49-285.01(A) and (B). Unless the Assignor has breached the Agreement, the Assignor retains the benefits of the Agreement.

VII. STATE OF ARIZONA'S COVENANT NOT TO SUE.

25. Subject to the Reservation of Rights in Section VIII of this Agreement, the State of Arizona covenants not to sue or take any other civil or administrative action against Purchaser for any and all civil liability for injunctive relief or reimbursement of remedial action costs pursuant to WQARF or pursuant to 42 U.S.C. § 9607(a), with respect to the Existing Contamination.

VIII. RESERVATION OF RIGHTS BY STATE OF ARIZONA.

26. The covenant not to sue set forth in Section VII above does not pertain to any matters other than those expressly specified in that Section. The State of Arizona reserves and

the Agreement is without prejudice to all rights against Purchaser with respect to all other matters, including, but not limited to, the following:

a) claims based on a failure by Purchaser to meet a requirement of this Agreement;

b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants at or from the Property caused or contributed to by Purchaser, its successors, assignees, lessees or sublessees;

c) any liability resulting from exacerbation by Purchaser, its successors, assignees, lessees or sublessees, of Existing Contamination;

d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property after the effective date of this Agreement, not within the definition of Existing Contamination;

e) civil or criminal liability for past or future violations by Purchaser of local, State or federal statutes or regulations.

27. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State of Arizona may have against any person, firm, corporation or other entity not a party to this Agreement.

28. Nothing in this Agreement is intended to limit the right of the State of Arizona to undertake future remedial actions at the Property or to seek to compel parties other than Purchaser to perform or pay for remedial actions at the Property. Nothing in this Agreement shall in any way restrict or limit the nature or scope of remedial actions which may be taken or be required by the State in exercising its authority under State or Federal law. Purchaser acknowledges that it is purchasing property where remedial actions may be required.

IX. PURCHASER'S COVENANT NOT TO SUE AND RESERVATION OF RIGHTS.

29. Except for claims arising out of the State of Arizona's status as a responsible party under WQARF, A.R.S. § 49-283, if applicable, and 42 U.S.C. § 9607, Purchaser hereby

covenants not to sue and not to assert any claims or causes of action against the State of Arizona, its authorized officers, employees, or representatives with respect to Existing Contamination at or below the Property or under this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the WQARF pursuant to A.R.S. § 49-282 or from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, 42 U.S.C. § 9607 or 42 U.S.C. § 9613, or any other provision of law, any claim against the State of Arizona including any department, agency, or instrumentality of the State of Arizona or the United States including any department, agency, or instrumentality of the United States, under WQARF, A.R.S. § 49-285, or 42 U.S.C. § 9607, or 42 U.S.C. § 9613, related to the Property, or any claims arising out of remedial actions at the Property related to Existing Contamination, including claims based on ADEQ's oversight or implementation of such activities or approval of plans for such activities. This Covenant Not to Sue and Covenant Not to Assert Claims does not apply to acts of negligence or willful misconduct on the part of ADEQ or its contractors in performing remedial actions or engaging in other activities at the Property.

X. PARTIES BOUND/ASSIGNMENT OF COVENANT.

30. This Agreement shall apply to and be binding upon the State of Arizona, and shall apply to and be binding on Purchaser, its officers, directors, employees, and agents, successors, assignees, lessees or sublessees. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

31. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations conferred upon Purchaser under this Agreement may be assigned or transferred to any person with prior written notice to ADEQ as prescribed by A.R.S. § 49-285.01(E) and (F) and Section VII (State of Arizona's Covenant Not to Sue) of this Agreement.

XI. DOCUMENT RETENTION.

32. Purchaser agrees to retain and make available to ADEQ for inspection and copying all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least five years, following the effective date of this Agreement.

XII. DISCLAIMER.

33. This Agreement in no way constitutes a finding by the State of Arizona as to the risks to human health and the environment which may be posed by contamination at or below the Property or the Site nor constitutes any representation by the State of Arizona that the Property or the Site is fit for any particular purpose.

XIII. PAYMENT OF COSTS.

34. Purchaser has paid to ADEQ an initial fee of \$900.00 in partial payment of ADEQ's costs for the preparation and execution of this Agreement pursuant to A.R.S. § 49-285.01(H). ADEQ shall provide Purchaser with a billing for payment of ADEQ's remaining costs for the preparation and execution of this Agreement, which shall include, but not be limited to, the cost of publishing the mandatory public notice for this Agreement. All fees shall be paid to ADEQ in full prior to the execution of this Agreement.

35. If Purchaser fails to comply with the terms of this Agreement, it shall be liable for all litigation and other enforcement costs incurred by the State of Arizona to enforce this Agreement or otherwise obtain compliance.

XIV. NOTICES AND SUBMISSIONS.

36. All notices or other communications under this Agreement shall be in writing and shall be deemed to have been duly given on the date of service, if served personally on the party to whom notice was given, or on the third day after mailing, if mailed to the party to whom notice

is to be given by first class mail, registered or certified return receipt, postage prepaid and properly addressed as follows:

ADEQ: Kris Kommalan, Project Manager
Superfund Programs Section
Arizona Department of Environmental Quality
3033 North Central Avenue
Phoenix, AZ 85012
Fax: (602) 207-4236

PURCHASER: Sterling Network Exchange, LLC
Attention: Anthony Wanger
650 Dundee Road, Suite 370
Northbrook, Illinois 60062
Telephone: (847) 480-4000
Fax: (847) 480-0199

XV. EFFECTIVE DATE.

37. The effective date of this Agreement shall be the date upon which ADEQ executes this Agreement.

XVI. TERMINATION.

38. If Purchaser or successors-in-interest believe that the easements granted under Section VI (Easement/Notice to ADEQ and Successors in Interest) are no longer necessary to ensure compliance with this Agreement or A.R.S. Title 49, Purchaser or successors-in-interest may request in writing that ADEQ agree to terminate the easements granted, provided, however, that the easements shall continue in force unless and until the party requesting such termination receives written agreement from ADEQ to terminate such provisions.

XVII. CONTRIBUTION PROTECTION.

39. With regard to claims for contribution against Purchaser, the Parties hereto agree that, if Purchaser fully complies with the terms and conditions of this Agreement, ADEQ may

agree to seek protection from contribution actions or claims as provided by A.R.S. § 49-292(C) and 42 U.S.C. § 9613(f)(2), for matters addressed in this Agreement and described in a separate, judicially approved consent decree. The matters addressed in this Agreement are all remedial actions taken or to be taken and remedial action costs incurred or to be incurred by the State of Arizona or any other person for the Property with respect to the Existing Contamination.

40. Purchaser agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the ADEQ in writing no later than 60 days prior to the initiation of such suit or claim.

XVIII. EXHIBITS.

41. Exhibit 1 shall mean the description of the Property which is the subject of this Agreement.

42. Exhibit 2 shall mean the map depicting the Site.

43. Exhibit 3 shall mean the information presented to ADEQ pursuant to paragraph 8 of this Agreement.

44. There is no Exhibit 4 to this Agreement.

XIX. PLACEMENT OF LIEN BY THE DEPARTMENT.

45. In any case in which the state conducts remedial actions and there are unrecovered response costs at a facility for which the owner of the facility is not liable, the State may, as a condition of the agreement, impose a lien upon that facility for the unrecovered costs pursuant to A.R.S. § 49-295.

XX. PUBLIC COMMENT.

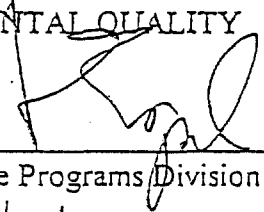
46. This Agreement shall be subject to a thirty-day public comment period, after which ADEQ may modify or decline to execute a final Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate. However, if ADEQ proposes a modification to this Agreement that is unacceptable to Purchaser,

Purchaser may decline to enter into a final Agreement, within thirty days of receipt of the modifications, without penalty or prejudice.

47. Subject to satisfactory performance of the obligations under this Agreement, the Purchaser is not liable to this State under Arizona Revised Statutes Title 49, Chapter 2, Article 5, for any release of a hazardous substance at the Property that exists on the date of acquisition of ownership or operation of the Property.

It is So Agreed:

ARIZONA DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: 
Director, Waste Programs Division

Date:

4/3/00

It is So Agreed:

STERLING NETWORK EXCHANGE, LLC

By: 

Its:

PRESIDENT

Date:

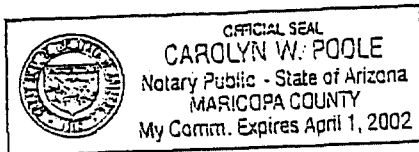
1/26/00

STATE OF ARIZONA)

County of MARICOPA)

SS

The foregoing instrument was acknowledged before me this 3rd day of April 2000, by David G. Goss, the Director of Waste Programs Division of the Arizona Department of Environmental Quality.



Carolyn W. Poole
Notary Public

My Commission Expires:

4/1/02

STATE OF Illinois)

County of Cook)

SS

The foregoing instrument was acknowledged before me this 28th day of January 2000, by Jeffrey S. Perelman, the President of Sterling Network Exchange, LLC, a Delaware limited liability company, on behalf of the Company.

Demetra G. Faden
Notary Public



My Commission Expires:

2-18-03

1992

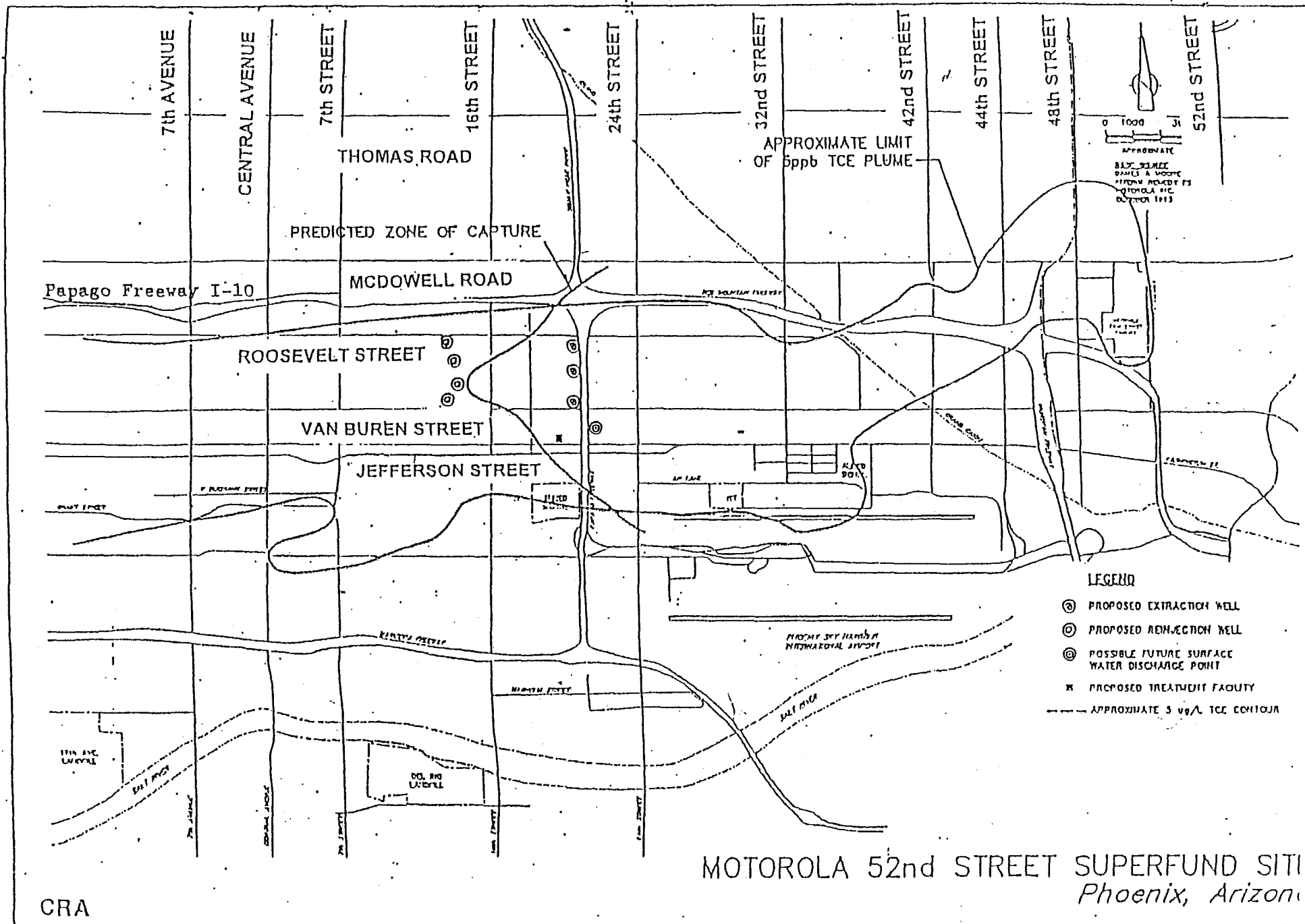
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Survey of land 1/2 sec. 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844,

Except the South 7.75 feet condemned to City of Phoenix by Judgment dated November



CRA

Exhibit 3 to Prospective Purchaser Agreement by and between the Arizona Department of Environmental Quality on behalf of the State of Arizona and Sterling Network Exchange, LLC

1. "Subsurface Soil Investigation Report Phoenix Newspapers, Incorporated, 120 East Van Buren Street, Phoenix, Arizona" signed on 7/16/93 by Katherine Roxlo with Brown & Caldwell.
2. "Phase I Environmental Site Assessment of Former Phoenix Newspapers Building, 120 East Van Buren Street, Phoenix, Arizona" dated July 2, 1999 prepared by LFR Levine-Fricke.
3. "Phase II Environmental Site Assessment of Former Phoenix Newspapers Building, 120 East Van Buren Street, Phoenix, Arizona" dated October 6, 1999 prepared by LFR Levine-Fricke.
4. "Investigation Report for Drywells in Sub-Basement of Old Phoenix Newspapers, Inc. Building, 120 East Van Buren Street, Phoenix, Arizona" dated September 7, 1999 prepared by LFR Levine-Fricke.
5. "Aquifer Protection Permit Application for Drywells in Sub-Basement of Old Phoenix Newspapers, Inc. Building, 120 East Van Buren Street, Phoenix, Arizona" dated September 7, 1999 prepared by LFR Levine-Fricke.
6. "Volume II Aquifer Permit Application for Drywells in Sub-Basement of Old Phoenix Newspapers, Inc. Building, 120 E. Van Buren Street, Phoenix, Arizona" dated September 7, 1999 prepared by LFR Levine-Fricke.
7. Letter from Chio-Lian Chen on behalf of ADEQ to Katherine Roxlo dated October 12, 1999.

There is no Exhibit 4 to the Prospective Purchaser Agreement by and between the Arizona Department of Environmental Quality and Sterling Network Exchange, LLC.

1 JANET NAPOLITANO
2 Arizona Attorney General
2 Firm State Bar No. 14000

3 Linda J. Pollock
3 State Bar No. 004722
4 Assistant Attorney General
4 Office of the Arizona Attorney General
5 1275 West Washington Street
5 Phoenix, Arizona 85007
6 (602) 542-1610

7 Attorneys for Plaintiff

FILED	LODGED
RECEIVED	COPY
JAN 10 2002	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	Z. DEPUTY

8
9 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

10 State of Arizona ex rel. Jacqueline E.
11 Schafer, Director, Arizona
12 Department of Environmental Quality,

13 Plaintiff,

14 v.

15 Sterling Network Exchange No. 2, LLC,
16 a Delaware limited liability company,

17 Defendant.

18
19 State of Arizona ex rel. Jacqueline E.
20 Schafer, Director, Arizona
21 Department of Environmental Quality

22 Plaintiff,

23 v.

24 Sterling Network Exchange, LLC,
25 a Delaware limited liability company,

26 Defendant.
27
28

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

NOTICE OF LODGING
OF CONSENT DECREE
FOR APPROVAL AND
ENTRY

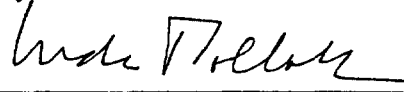
(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

(STERLING NETWORK
EXCHANGE, LLC)

1 Plaintiff State of Arizona *ex rel.* Arizona Department of Environmental Quality and
2 Jacqueline E. Schafer, Director of ADEQ and Arizona's Trustee for natural resources, gives
3 notice that it has lodged the attached prospective purchaser Consent Decree with this Court
4 for approval and entry.

5 Respectfully submitted this 10 day of January, 2002.

6 JANET NAPOLITANO
7 Attorney General

8 By 
9 Linda J. Pollock, Assistant Attorney General
10 Attorneys for Plaintiff
11 State of Arizona
12

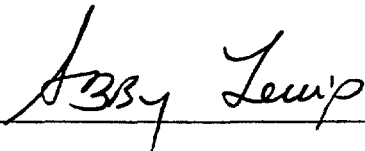
13 Original lodged this 10th day
14 of January, 2002 with:

15 The Honorable Stephen L. Verkamp
16 Magistrate
17 United States District Court
18 for the District of Arizona
19 401 West Washington Street
20 Phoenix, Arizona 85003

21 and

22 Copy mailed to:

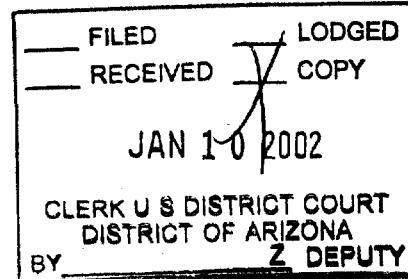
23 Robert J. Kramer, Esquire
24 Fennemore Craig
25 3003 North Central Avenue, Suite 2600
26 Phoenix, Arizona 85012

27 
28

1 JANET NAPOLITANO
2 Arizona Attorney General
Firm State Bar No. 14000

3 Linda J. Pollock
4 State Bar No. 004722
5 Assistant Attorney General
6 Office of the Arizona Attorney General
1275 West Washington Street
Phoenix, Arizona 85007
(602) 542-1610

7 Attorneys for Plaintiff



8
9 IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

10 State of Arizona ex rel. Jacqueline E.
11 Schafer, Director, Arizona
12 Department of Environmental Quality,
Plaintiff,

13
14 v.

15 Sterling Network Exchange No. 2, LLC,
16 a Delaware limited liability company,
17 Defendant.

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

NOTICE OF LODGING
OF CONSENT DECREE
FOR APPROVAL AND
ENTRY

(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

(STERLING NETWORK
EXCHANGE NO. 2, LLC)

18
19 State of Arizona ex rel. Jacqueline E.
20 Schafer, Director, Arizona
Department of Environmental Quality
21 Plaintiff,

22 v.

23 Sterling Network Exchange, LLC,
24 a Delaware limited liability company,
25 Defendant.

1 Plaintiff State of Arizona *ex rel.* Arizona Department of Environmental Quality and
2 Jacqueline E. Schafer, Director of ADEQ and Arizona's Trustee for natural resources, gives
3 notice that it has lodged the attached prospective purchaser Consent Decree with this Court
4 for approval and entry.

5 Respectfully submitted this 10 day of January, 2002.

6 JANET NAPOLITANO
7 Attorney General

8 By Linda J. Pollock
9 Linda J. Pollock, Assistant Attorney General
10 Attorneys for Plaintiff
11 State of Arizona

12 Original lodged this 10th day
13 of January, 2002 with:

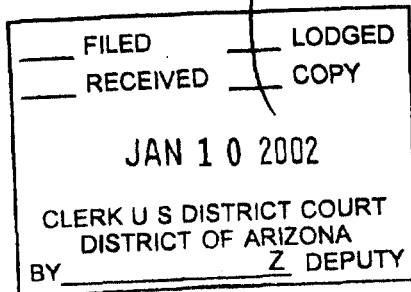
14 The Honorable Stephen L. Verkamp
15 Magistrate
16 United States District Court
17 for the District of Arizona
18 401 West Washington Street
19 Phoenix, Arizona 85003

20 and

21 Copy mailed to:

22 Robert J. Kramer, Esquire
23 Fennemore Craig
24 3003 North Central Avenue, Suite 2600
25 Phoenix, Arizona 85012

26 Abby Lewis
27
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality,
Plaintiff,

v.

Sterling Network Exchange No. 2, LLC,
a Delaware limited liability company,
Defendant.

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality
Plaintiff,

v.

Sterling Network Exchange, LLC,
a Delaware limited liability company,
Defendant.

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

**ORDER FOR ENTRY
OF CONSENT DECREE**

(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

**(STERLING NETWORK
EXCHANGE, LLC)**

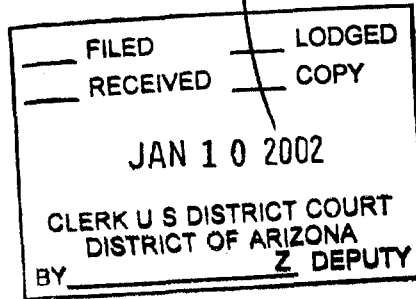
25 Upon review of the proposed Consent Decree filed by the parties and the Motion for
26 Entry of Consent Decree, and for good cause shown,

27 IT IS HEREBY ORDERED that the Court grants the Motion for Entry of Consent
28 Decree and does approve and enter the Consent Decree in the form lodged with the Court on
January 10, 2002, and filed herewith.

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DATED this _____ day of _____, 2002.

Stephen L. Verkamp
United States Magistrate Judge



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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality,
Plaintiff,

v.

Sterling Network Exchange No. 2, LLC,
a Delaware limited liability company,
Defendant.

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

**ORDER FOR ENTRY
OF CONSENT DECREE**

(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

**(STERLING NETWORK
EXCHANGE NO. 2, LLC)**

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality
Plaintiff,

v.

Sterling Network Exchange, LLC,
a Delaware limited liability company,
Defendant.

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Upon review of the proposed Consent Decree filed by the parties and the Motion for
Entry of Consent Decree, and for good cause shown,

IT IS HEREBY ORDERED that the Court grants the Motion for Entry of Consent
Decree and does approve and enter the Consent Decree in the form lodged with the Court on
January 10, 2002, and filed herewith.

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DATED this _____ day of _____, 2002.

Stephen L. Verkamp
United States Magistrate Judge

FILED	LODGED
RECEIVED	COPY
JAN 10 2002	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	2 DEPUTY

JANET NAPOLITANO
Arizona Attorney General
Firm State Bar No. 14000

Linda J. Pollock
State Bar No. 004722
Assistant Attorney General
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1275 West Washington Street
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(602) 916-5464

Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality,

Plaintiff,

v.

Sterling Network Exchange No. 2, LLC,
a Delaware limited liability company,

Defendant.

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

**JOINT MOTION FOR APPROVAL
AND ENTRY OF CONSENT
DECREE**

(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

**(STERLING NETWORK
EXCHANGE, LLC)**

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality

Plaintiff,

v.

Sterling Network Exchange, LLC,
a Delaware limited liability company,

Defendant.

1 Plaintiff State of Arizona *ex rel.* Arizona Department of Environmental Quality
2 (“State”) and Defendant Sterling Network Exchange, LLC (“Sterling”) request that this
3 Court approve, sign and enter the Consent Decree lodged with this Court. The Consent
4 Decree is the product of a prospective purchaser settlement between the Parties pursuant to
5 Ariz. Rev. Stat. Ann. (A.R.S.) § 49-285.01 and should be approved because it is fair,
6 reasonable, and consistent with the objectives of CERCLA¹, which is the test for court
7 approval of CERCLA settlements. *State of Arizona v. Nucor Corp.*, 825 F. Supp. 1452, 1456
8 (D. Ariz. 1992), *aff’d*, 66 F.3d 213 (9th Cir. 1995).

9 This Motion is supported by the following Memorandum of Points and Authorities.

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. ARIZONA’S PROSPECTIVE PURCHASER AGREEMENT STATUTE**

12 In 1997, the Arizona Legislature enacted A.R.S. § 49-285.01, which authorizes the
13 State acting through the Arizona Department of Environmental Quality (ADEQ)² to enter
14 into an agreement under Arizona’s Superfund law, the Water Quality Assurance Revolving
15 Fund (“WQARF”)³, and § 107 of CERCLA with any person who purchases real property
16 contaminated with a hazardous substance. A person is eligible for a prospective purchaser
17 agreement with the State if all the following conditions are met: (1) ADEQ has been
18 provided with sufficient information to reasonably identify the extent of the contamination,
19 (2) the prospective purchaser is not liable for the contamination or for an existing or
20 threatened release of a hazardous substance at the property, (3) the proposed redevelopment
21 or reuse of the property will not contribute to or exacerbate the contamination, unreasonably
22 interfere with remedial actions at the property, or cause the contamination to present a
23 substantial health risk to the public, (4) the prospective purchaser will provide a substantial
24

25 ¹Comprehensive Environmental Response, Compensation and Liability Act of 1980
26 (“CERCLA”), 42 U.S.C. §§ 9601-9675 (1980), as amended by the Superfund Amendments and
Reauthorization Act of 1986 (“SARA”), Pub. L. No. 99-499, 100 Stat. 1613 (1986).

27 ²ADEQ was created on August 13, 1986 and is charged with enforcing Arizona’s environmental
28 laws. A.R.S. §§ 49-202, 203 (Supp.2000).

³A.R.S. §§ 49-281 to -298.

1 public benefit, and (5) ADEQ consults with local planning and zoning authorities with
2 jurisdiction over the property and considers reasonably anticipated future land uses at the
3 property and surrounding properties.

4 A.R.S. § 49-285.01 authorizes the State to grant a release and covenant not to sue to
5 the prospective purchaser for any liability the purchaser may have to the State under
6 WQARF and CERCLA related to releases of hazardous substances at the property that exist
7 on the date of the purchaser's acquisition of ownership. The parties may also agree to seek
8 an order of the court approving a settlement that grants the prospective purchaser protection
9 from claims of contribution under WQARF and § 113(f)(2) of CERCLA. The prospective
10 purchaser is not eligible for a prospective purchaser agreement or a settlement if he is
11 affiliated with anyone who is responsible for the contamination through any familial
12 relationship or any corporate or contractual relationship, other than a contract to protect a
13 security interest. Moreover, the prospective purchaser bears the burden of proving that the
14 contamination was released before he acquired ownership of the property.

15 A.R.S. § 49-285.01 requires the prospective purchaser to provide written notice to
16 ADEQ of any sale, assignment or other transfer of the property at least fifteen (15) business
17 days before the date of the transfer. In addition, a prospective purchaser agreement is
18 assignable if the assignee qualifies as a prospective purchaser and notice of the assignment is
19 given to ADEQ at least fifteen (15) business days before the date of the assignment. The
20 assignee shall assume all the obligations and benefits of the prospective purchaser
21 agreement.

22 The statute requires ADEQ to publish notice of the prospective purchaser agreement
23 in a newspaper of general circulation in the county in which the property is located at least
24 fifteen (15) business days before the execution of a prospective purchaser agreement. The
25 notice shall include a general description of the contents of the agreement and any interested
26 person may comment on the proposed agreement in writing to ADEQ. A.R.S. § 49-
27 285.01(G). In addition, public notice of a prospective purchaser consent decree which
28 awards contribution protection is also required. A.R.S. § 49-292(G).

1 **II THE PARTIES HAVE COMPLIED WITH THE PROSPECTIVE**
2 **PURCHASER AGREEMENT STATUTE AND REQUEST ENTRY OF A**
3 **CONSENT DECREE GRANTING TO STERLING CONTRIBUTION**
4 **PROTECTION**

5 On November 12, 1999, Sterling purchased the former Phoenix Newspaper
6 Building at 120 East Van Buren Street, Phoenix, Arizona (the "Property") (the adjacent
7 parking annex is also the subject of a prospective purchaser Consent Decree lodged
8 concurrently herewith between the State and Sterling Network Exchange No. 2, LLC, in this
9 consolidated action). The Property purchased by Sterling is located within the Motorola 52nd
10 Street Superfund Site and the groundwater beneath the Property has been impacted by
11 releases of hazardous substances. Even though Sterling represents that it did not cause or
12 contribute to these releases of hazardous substances, the company became an "owner" under
13 CERCLA upon acquisition of title and strictly, jointly and severally liable for all costs
14 incurred by the State or third persons in responding to releases at or from the Property.⁴

15 Sterling filed an application for a prospective purchaser agreement with ADEQ, and,
16 upon reviewing the relevant information, ADEQ determined that Sterling was eligible for a
17 prospective purchaser agreement. Following publication of notice of the agreement, ADEQ
18 signed the prospective purchaser agreement on April 3, 2000. The agreement provides that
19 the Parties agree to seek an order of the Court granting approval of a settlement that contains
20 contribution protection. Thereafter, the State filed this action in an effort to provide Sterling
21 with contribution protection under WQARF and CERCLA.

22 Sterling complied with A.R.S. § 49-285.01(G) by publishing a notice of the
23 prospective purchaser Consent Decree on June 14, 2001 and June 21, 2001, in the *Arizona*
24 *Business Gazette*, a newspaper of general circulation in the county where the Property is
25 located. The notice summarized the Consent Decree and stated that the Consent Decree was
26 available for review and any interested person may file a written comment with this Court

27 ⁴ "Owner" is defined by § 101(20) of CERCLA, 42 U.S.C. § 9601(20). An owner is liable for:
28 (1) all response costs incurred by the United States or a State, (2) all necessary response costs incurred
by any other person, (3) natural resources damages, and (4) the costs of any health assessment. Section
107(a) of CERCLA, 42 U.S.C. § 9607(a).

1 within thirty (30) days. A copy of the notice and the affidavit of publication are attached as
2 Exhibit 1. The thirty day public comment expired on July 23, 2001 and no public comments
3 were filed.

4 **III. TERMS OF THE PROSPECTIVE PURCHASER CONSENT DECREE**

5 The purpose of the Consent Decree is to resolve the potential WQARF and CERCLA
6 liability that Sterling may have relating to Existing Contamination at the Property, defined as
7 any hazardous substances present or existing at or from the Property as of the effective date
8 of the prospective purchaser agreement. The Consent Decree is also intended
9 to provide Sterling with contribution protection under WQARF and CERCLA which
10 is effective only after the Consent Decree is approved and entered by this Court.

11 The Consent Decree contains the following material provisions:

12 1. Representations by Sterling Sterling represents that it did not cause or contribute
13 to the contamination at the Property, is not affiliated with any person who is responsible for
14 the contamination, and was not an owner or operator of the Property before acquiring title to
15 the Property. Sterling represents that it has not altered or disposed of any documents or
16 other information relating to the contamination and has fully and accurately disclosed to
17 ADEQ all information in its possession or control relating to the environmental condition of
18 the Property. Consent Decree, Article IX.

19 2. Access. Sterling agrees to grant to ADEQ and its authorized representatives an
20 easement to provide access to the Property for remedial actions authorized by WQARF in
21 connection with Existing Contamination. Consent Decree, Article XIV.

22 3. Redevelopment of the Property. Sterling agrees to renovate the Property and put
23 the building into productive reuse. Consent Decree, Exhibit 1, Paragraph V.

24 4. Due Care. Sterling agrees to exercise due care at the Property and to comply with
25 all applicable local state and federal environmental laws, and to not exacerbate or contribute
26 to any Existing Contamination. Consent Decree, Exhibit 1, Paragraph IV.

27 5. Covenant Not to Sue. The State grants to Sterling a covenant not to sue under
28 WQARF and CERCLA for Existing Contamination at the Property. The scope of the State's

1 covenant not to sue is defined in "Covered Matters," Consent Decree, Article XI; Article
2 VIII, par. 35.

3 6. Reservation of Rights. The State reserves the right to proceed against Sterling for
4 any matter not covered by the Consent Decree. Consent Decree, Article XII.

5 7. Assignment of the Consent Decree. If Sterling assigns its interest in the Property,
6 the assignee shall assume all obligations under the prospective purchaser agreement and this
7 Consent Decree. Consent Decree, Article XIV.

8
9 **IV. THIS COURT SHOULD APPROVE AND ENTER THIS CONSENT DECREE**

10 Prior to approving a proposed CERCLA settlement agreement, the court must find that
11 the settlement is procedurally fair, substantively fair and reasonable, and consistent with the
12 objectives of CERCLA. *U.S. v. Montrose Chemical Corp. of California*, 50 F.3d 741, 746
13 (9th Cir. 1995); *U.S. v. Cannons Eng'g Corp.*, 899 F.2d 79, 84-85 (1st Cir. 1990); *State of*
14 *Arizona v. Nucor Corp.*, 825 F. Supp. 1452, 1456, *aff'd*, 66 F.3d 213 (9th Cir. 1995). The
15 decision to approve a consent decree is left to the court's discretion, which will not be
16 reversed unless the court clearly abused its discretion. *Montrose*, 50 F.3d at 746. In
17 determining whether a settlement satisfies the foregoing test, the court is guided by two well
18 settled principles.

19 First, the court shall give deference to the agency's expertise and determination that
20 the settlement is fair, reasonable, and consistent with the objectives of CERCLA. *Montrose*,
21 50 F.3d at 746; *Cannons*, 899 F.2d at 84; *Nucor*, 825 F. Supp. at 1456. Although the true
22 measure of deference due to the agency depends on the persuasive power of the agency's
23 proposal and rationale, a court reviewing a proposed consent decree "must refrain from
24 second-guessing the Executive Branch." *Cannons*, 899 F.2d at 84. Such deference is
25 appropriate given that the parties, who are knowledgeable and represented by experienced
26 lawyers, "have hammered out an agreement at arm's length and advocate its embodiment in a
27 consent decree." *Id.*
28

1 Second, the court will not conduct a *de novo* review of the merits of the proposed
2 settlement, but neither will it “mechanically rubberstamp” the agreement. *Cannons*, 899 F.2d
3 at 84; *Nucor*, 825 F. Supp. at 1456. The court will review CERCLA settlements with a
4 presumption in favor of approval. *Id.* at 87-88; *U.S. v. Bay Area Battery*, 895 F. Supp. 1524,
5 1528 (N.D. Fla. 1995). The court’s task is not to substitute its own judgment for that of the
6 parties, but rather to determine whether the settlement represents a reasonable compromise
7 while bearing in mind the law’s generally favorable disposition toward the voluntary
8 settlement of litigation and CERCLA’s specific preference for early settlements. *Montrose*, 50
9 F.3d at 748; *Cannons*, 899 F.2d at 84.

10 A. Procedural Fairness

11 The process that results in a CERCLA settlement agreement must be procedurally fair.
12 When considering the procedural fairness of the agreement, the court must look to the
13 negotiation process and attempt to gauge its candor, openness and bargaining balance.
14 *Cannons*, 899 F.2d at 87; *Nucor*, 825 F. Supp. at 1456.

15 The Consent Decree lodged with this Court and the underlying Prospective Purchaser
16 Agreement are the result of negotiations between the Parties concerning the extent and nature
17 of the contamination at the Property, access, public notice, and other material issues. The
18 Parties are represented by experienced environmental attorneys who conducted the settlement
19 negotiations in good faith and at arm’s length. The Consent Decree is the result of a process
20 that was procedurally fair.

21 B. Substantive Fairness and Reasonableness

22 Substantive fairness concerns the issues of corrective justice and accountability.
23 *Nucor*, 825 F. Supp. at 1458-59. The settlement terms should be based on an acceptable
24 measure of comparative fault that apportions liability according to a rational (if necessarily
25 imprecise) estimate of how much harm each responsible party has caused. *Cannons*, 899
26 F.2d at 87-88; *Foamseal, Inc. v. Dow Chemical Co.*, 991 F. Supp. 883, 885 (E.D. Mich.
27 1998).

1 The court's role is not to determine the best method for measuring fault or
2 apportioning liability, but rather to uphold the method proposed by the agency, unless it is
3 arbitrary, capricious, and devoid of a rational basis. *Nucor*, 825 F. Supp. at 1459; *Cannons*,
4 899 F.2d at 87-88; *Foamseal*, 991 F. Supp. at 885. In determining whether a settlement is
5 substantively fair, the court will consider both tangible and intangible benefits to the state and
6 prior cooperation by the settling party. *Nucor*, 825 F. Supp. at 1462.

7 In enacting A.R.S. § 49-285.01, the Arizona Legislature determined it was in the
8 public interest to allow innocent prospective purchasers to escape the financial burdens of
9 CERCLA and WQARF by settling with ADEQ. The Legislature enacted A.R.S. § 49-
10 285.01 in order to allow prospective purchasers, who had nothing to do with the
11 contamination, to quickly settle their liability to the State and receive contribution protection
12 under WQARF and CERCLA. The statute provides a simple, rational, and efficient method
13 of resolving an innocent owner's potential liability under WQARF and CERCLA liability. In
14 turn, the relief afforded to prospective purchasers acquiring contaminated properties
15 promotes the redevelopment of "brownsfield" properties. The Consent Decree between the
16 Parties satisfies the test of substantial fairness and reasonableness.

17 C. Consistency With the Objectives of CERCLA

18 The proposed settlement must be consistent with the CERCLA principles of
19 accountability, the desirability of an unsullied environment, and promptness of response
20 activities. *Charles George Trucking*, 34 F.3d at 1086; *Nucor*, 825 F. Supp. at 1464.
21 CERCLA is designed to favor settlements over litigation and its primary goal is to encourage
22 early settlements. *Montrose*, 50 F.3d at 748; *Cannons*, 899 F.2d at 84; *Nucor*, 825 F. Supp.
23 at 1464.

24 The Consent Decree between the Parties is consistent with the objectives of CERCLA.
25 Sterling's acquisition and redevelopment of the Property will put otherwise vacant property
26 to a productive reuse while relieving the company of the harsh consequences of strict, joint
27 and several liability under CERCLA and several liability under WQARF.

1 V. CONCLUSION

2 Based upon the foregoing, the State requests that this Court approve and enter the
3 Consent Decree as lodged.

4 RESPECTFULLY SUBMITTED this 10 day of January, 2002.

5 JANET NAPOLITANO
6 Attorney General

7 By Linda J. Pollock
8 Linda J. Pollock, Assistant Attorney General
9 Attorneys for Plaintiff
State of Arizona

10 FENNEMORE CRAIG

11 By Robert J. Kramer
12 Robert J. Kramer, Esquire
13 Attorneys for Defendant
14 Sterling Network Exchange, LLC

15 Original and one copy filed
16 with the U.S. District Court
17 this 10th day of January, 2002

18 and a copy mailed this same date to:

19 The Honorable Stephen L. Verkamp
20 U.S. Magistrate Judge
123 North San Francisco St.
21 Flagstaff, AZ 86001

22 Steph Verkamp

23 214962

EXHIBIT 1
AFFIDAVIT OF PUBLICATION
STERLING NETWORK EXCHANGE, LLC

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ARIZONA DEPARTMENT
OF ENVIRONMENTAL
QUALITY
NOTICE OF SETTLEMENT
AND 10-DAY COMMENT
PERIOD
UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF ARIZONA
RELEASE TAKE NOTICE
that the State of Arizona ex rel
Jacqueline E. Schafer, Director
of the Arizona Department of
Environmental Quality (the
State) and Sterling Network
Exchange, LLC, have entered
into a proposed Consent De-
gree. The Decree concerns the
alleged releases and alleged
threats of releases of hazar-
dous substances into the envi-
ronment from the former Phoenix
Newspapers Building located
at 120 East Van Buren Street,
Phoenix, Arizona (the Prop-
erty). This Property is lo-
cated within the Motorola, Inc.
32nd Street Superfund Site (the
Site). This Property is adjacent
to vacant lots located on the
northeast corner of Central
Avenue and Van Buren Street,
Phoenix, Arizona. The legal
description of the Property is
contained in the prospectus
purchasing a parcel en-
tered into between ADEQ and
Sterling Network Exchange,
LLC, and recorded as docu-
ment number 00-026633 in the
Office of the Maricopa County
Recorder. The Property is ad-
jacent to vacant lots that
are the subject of a separate
Consent Decree filed concur-
rently therewith between the
State and Sterling Network
Exchange, LLC. No. 01-01015-015
District Court No. 01-01015-015
P.B.X. SEV. 1/1/2001.
The Site is part of the Motor-
ola 32nd Street Superfund Site
listed by EPA in the National
Contingency Plan. 40 C.F.R.
Part 300. The Property is a
facility as defined by 101 (9) of
CERCLA, 42 U.S.C. § 9601(9).
Sterling is an owner pursuant
to A.R.S. § 49-283 and § 49-287(a)
of CERCLA, 42 U.S.C. § 9607,
and has qualified as a prospec-
tive purchaser pursuant to
A.R.S. § 49-285 entitled to
an award of protection from
claims for contribution and
cost recovery pursuant to Sec-
tion 113 of CERCLA and 49-
292(C) of CERCLA and 49-
292(C) of CERCLA. Upon
Court approval and entry of
the Decree, ADEQ and
ADEQ will award from
this Court on behalf of a person
who purchases contaminated
property where the person
demonstrates liability for the per-
son's contribution to the
contamination and (2) that the proposed
redevelopment of the
property will not contribute to
or exacerbate existing known
contamination and will provide
a substantial public benefit.
Copies of the Complaint, the
Consent Decree, and other
papers related to this matter
have been filed with the Clerk
of the United States District
Court located in the District
of Arizona in Phoenix. Copies may
be obtained from the Arizona
Department of Environmental
Quality, 3003 N. Central Ave-
nue, Phoenix, Arizona 85012.
Any person who desires to com-
ment on this settlement must
do so by filing their written
comments with the Clerk of the
United States District Court for
the District of Arizona, 200 N.
First Avenue, Phoenix, Ariz-
ona 85025, no later than 30
days from the date of publi-
cation of this Notice, with refer-
ence to State of Arizona v.
Sterling Network Exchange,
LLC, No. CIV. 01-0266-PIX-
SEV. Copies shall also be
mailed to the parties as fol-
lows:
Plaintiffs:
Rich Olm, Project Manager
Arizona Department of Envi-
ronmental Quality, 3003 N. Cen-
tral Avenue, Phoenix, Arizona
85012-7905
E. Inda, Policy Assistant At-
torney General's Office of the
Arizona Attorney General, 125
West Washington Phoenix, Ar-
izona 85007
Defendants:
Robert J. Romberg Esquire
Fennemore Gable 3003 North
Central Avenue, Suite 2600
Phoenix Arizona 85012
Such comments must be filed
with the Court and mailed to
the designated attorneys
within thirty (30) days from the
date of publication of this No-
tice.
ONCE THE CONSENT DE-
GREE IS APPROVED AND
RECORDED BY THE COURT

AFFIDAVIT OF PUBLICATION

STERLING NETWORK EXCHANGE, LLC

19

Arizona Business Gazette

The business resource

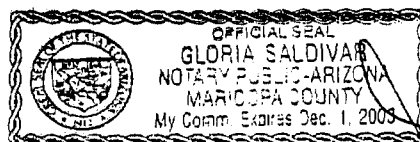
PO BOX 194
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(602) 444-7300 FAX (602) 444-7364

STATE OF ARIZONA } SS.
COUNTY OF MARICOPA }

Tom Bianco, being first duly sworn, upon oath deposes and says: That he is the legal advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published weekly at Phoenix, Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates indicated.

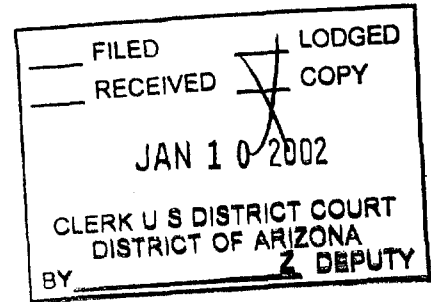
06/14/2001
06/21/2001

Sworn to before me this
21ST day of
JUNE A.D. 2001



[Signature]

[Signature]
Notary Public



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Firm State Bar No. 14000

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Attorneys for Defendant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality,

Plaintiff,

v.

Sterling Network Exchange No. 2, LLC,
a Delaware limited liability company,

Defendant.

No. CIV 01-0359-PHX-SLV
No. CIV 01-0360-PHX-SLV

(Consolidated)

**JOINT MOTION FOR APPROVAL
AND ENTRY OF CONSENT
DECREE**

(Prospective Purchaser Settlement
Under A.R.S. § 49-285.01)

**(STERLING NETWORK
EXCHANGE NO. 2, LLC)**

State of Arizona ex rel. Jacqueline E.
Schafer, Director, Arizona
Department of Environmental Quality

Plaintiff,

v.

Sterling Network Exchange, LLC,
a Delaware limited liability company,

Defendant.

1 Plaintiff State of Arizona *ex rel.* Arizona Department of Environmental Quality
2 (“State”) and Defendant Sterling Network Exchange No. 2, LLC (“Sterling No. 2”) request
3 that this Court approve, sign and enter the Consent Decree lodged with this Court. The
4 Consent Decree is the product of a prospective purchaser settlement between the Parties
5 pursuant to Ariz. Rev. Stat. Ann. (A.R.S.) § 49-285.01 and should be approved because it is
6 fair, reasonable, and consistent with the objectives of CERCLA¹, which is the test for court
7 approval of CERCLA settlements. *State of Arizona v. Nucor Corp.*, 825 F. Supp. 1452, 1456
8 (D. Ariz. 1992), *aff’d*, 66 F.3d 213 (9th Cir. 1995).

9 This Motion is supported by the following Memorandum of Points and Authorities.
10

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 I. ARIZONA’S PROSPECTIVE PURCHASER AGREEMENT STATUTE

13 In 1997, the Arizona Legislature enacted A.R.S. § 49-285.01, which authorizes the
14 State acting through the Arizona Department of Environmental Quality (ADEQ)² to enter
15 into an agreement under Arizona’s Superfund law, the Water Quality Assurance Revolving
16 Fund (“WQARF”)³, and § 107 of CERCLA with any person who purchases real property
17 contaminated with a hazardous substance. A person is eligible for a prospective purchaser
18 agreement with the State if all the following conditions are met: (1) ADEQ has been
19 provided with sufficient information to reasonably identify the extent of the contamination,
20 (2) the prospective purchaser is not liable for the contamination or for an existing or
21 threatened release of a hazardous substance at the property, (3) the proposed redevelopment
22 or reuse of the property will not contribute to or exacerbate the contamination, unreasonably
23 interfere with remedial actions at the property, or cause the contamination to present a
24

25 ¹Comprehensive Environmental Response, Compensation and Liability Act of 1980
26 (“CERCLA”), 42 U.S.C. §§ 9601-9675 (1980), as amended by the Superfund Amendments and
Reauthorization Act of 1986 (“SARA”), Pub. L. No. 99-499, 100 Stat. 1613 (1986).

27 ²ADEQ was created on August 13, 1986 and is charged with enforcing Arizona’s environmental
28 laws. A.R.S. §§ 49-202, 203 (Supp.2000).

³A.R.S. §§ 49-281 to -298.

1 substantial health risk to the public, (4) the prospective purchaser will provide a substantial
2 public benefit, and (5) ADEQ consults with local planning and zoning authorities with
3 jurisdiction over the property and considers reasonably anticipated future land uses at the
4 property and surrounding properties.

5 A.R.S. § 49-285.01 authorizes the State to grant a release and covenant not to sue to
6 the prospective purchaser for any liability the purchaser may have to the State under
7 WQARF and CERCLA related to releases of hazardous substances at the property that exist
8 on the date of the purchaser's acquisition of ownership. The parties may also agree to seek
9 an order of the court approving a settlement that grants the prospective purchaser protection
10 from claims of contribution under WQARF and § 113(f)(2) of CERCLA. The prospective
11 purchaser is not eligible for a prospective purchaser agreement or a settlement if he is
12 affiliated with anyone who is responsible for the contamination through any familial
13 relationship or any corporate or contractual relationship, other than a contract to protect a
14 security interest. Moreover, the prospective purchaser bears the burden of proving that the
15 contamination was released before he acquired ownership of the property.

16 A.R.S. § 49-285.01 requires the prospective purchaser to provide written notice to
17 ADEQ of any sale, assignment or other transfer of the property at least fifteen (15) business
18 days before the date of the transfer. In addition, a prospective purchaser agreement is
19 assignable if the assignee qualifies as a prospective purchaser and notice of the assignment is
20 given to ADEQ at least fifteen (15) business days before the date of the assignment. The
21 assignee shall assume all the obligations and benefits of the prospective purchaser
22 agreement.

23 The statute requires ADEQ to publish notice of the prospective purchaser agreement
24 in a newspaper of general circulation in the county in which the property is located at least
25 fifteen (15) business days before the execution of a prospective purchaser agreement. The
26 notice shall include a general description of the contents of the agreement and any interested
27 person may comment on the proposed agreement in writing to ADEQ. A.R.S. § 49-
28

1 285.01(G). In addition, public notice of a prospective purchaser consent decree which
2 awards contribution protection is also required. A.R.S. § 49-292(G).

3 **II THE PARTIES HAVE COMPLIED WITH THE PROSPECTIVE**
4 **PURCHASER AGREEMENT STATUTE AND REQUEST ENTRY OF A**
5 **CONSENT DECREE GRANTING TO STERLING NO. 2 CONTRIBUTION**
6 **PROTECTION**

7 On June 26, 2000, Sterling No. 2 purchased real property (a parking lot) located
8 on the northeast corner of Central Avenue and Van Buren Street, bounded by Central
9 Avenue, Van Buren Street, First Street and Polk Street, Phoenix, Arizona (the "Property")
10 adjacent to the former Phoenix Newspaper Building at 120 East Van Buren Street, Phoenix,
11 Arizona (the former Phoenix Newspaper Building is also the subject of a prospective
12 purchaser Consent Decree lodged concurrently herewith between the State and Sterling
13 Network Exchange, LLC, in this consolidated action). The Property purchased by Sterling
14 No. 2 is located within the Motorola 52nd Street Superfund Site and the groundwater beneath
15 the Property has been impacted by releases of hazardous substances. Even though Sterling
16 No. 2 represents that it did not cause or contribute to these releases of hazardous substances,
17 the company became an "owner" under CERCLA upon acquisition of title and strictly,
18 jointly and severally liable for all costs incurred by the State or third persons in responding
19 to releases at or from the Property.⁴

20 Sterling filed an application for a prospective purchaser agreement with ADEQ, and,
21 and upon reviewing the relevant information, ADEQ determined that Sterling No. 2 was
22 eligible for a prospective purchaser agreement. Following publication of notice of the
23 agreement, ADEQ signed the prospective purchaser agreement on August 29, 2000. The
24 agreement provides that the Parties agree to seek an order of the Court granting approval of
25 a settlement that contains contribution protection. Thereafter, the State filed this action in an
26 effort to provide Sterling No. 2 with contribution protection under WQARF and CERCLA.

27 ⁴ "Owner" is defined by § 101(20) of CERCLA, 42 U.S.C. § 9601(20). An owner is liable for:
28 (1) all response costs incurred by the United States or a State, (2) all necessary response costs incurred
by any other person, (3) natural resources damages, and (4) the costs of any health assessment. Section
107(a) of CERCLA, 42 U.S.C. § 9607(a).

1 Sterling No. 2 complied with A.R.S. § 49-285.01(G) by publishing a notice of the
2 prospective purchaser Consent Decree on June 14, 2001 and June 21, 2001, in the *Arizona*
3 *Business Gazette*, a newspaper of general circulation in the county where the Property is
4 located. The notice summarized the Consent Decree and stated that the Consent Decree was
5 available for review and any interested person may file a written comment with this Court
6 within thirty (30) days. A copy of the notice and the affidavit of publication are attached as
7 Exhibit 1. The thirty day public comment expired on July 23, 2001 and no public comments
8 were filed.

9 **III. TERMS OF THE PROSPECTIVE PURCHASER CONSENT DECREE**

10 The purpose of the Consent Decree is to resolve the potential WQARF and CERCLA
11 liability that Sterling No. 2 may have relating to Existing Contamination at the Property,
12 defined as any hazardous substances present or existing at or from the Property as of the
13 effective date of the prospective purchaser agreement. The Consent Decree is also intended
14 to provide Sterling No. 2 with contribution protection under WQARF and CERCLA which
15 is effective only after the Consent Decree is approved and entered by this Court.

16 The Consent Decree contains the following material provisions:

17 1. Representations by Sterling No. 2. Sterling No. 2 represents that it did not cause
18 or contribute to the contamination at the Property, is not affiliated with any person who is
19 responsible for the contamination, and was not an owner or operator of the Property before
20 acquiring title to the Property. Sterling No. 2 represents that it has not altered or disposed of
21 any documents or other information relating to the contamination and has fully and
22 accurately disclosed to ADEQ all information in its possession or control relating to the
23 environmental condition of the Property. Consent Decree, Article IX.

24 2. Access. Sterling No. 2 agrees to grant to ADEQ and its authorized representatives
25 an easement to provide access to the Property for remedial actions authorized by WQARF in
26 connection with Existing Contamination. Consent Decree, Article XIV.

27 3. Redevelopment of the Property. Sterling No. 2 agrees to redevelop the Property as
28 an annex to support the renovation and redevelopment of the adjacent former Phoenix

1 Newspapers Building located at 120 East Van Buren Street, Phoenix, Arizona. Consent
2 Decree, Exhibit 1, Paragraph V.

3 4. Due Care. Sterling No. 2 agrees to exercise due care at the Property and to comply
4 with all applicable local state and federal environmental laws, and to not exacerbate or
5 contribute to any Existing Contamination. Consent Decree, Exhibit 1, Paragraph IV.

6 5. Covenant Not to Sue. The State grants to Sterling No. 2 a covenant not to sue
7 under WQARF and CERCLA for Existing Contamination at the Property. The scope of the
8 State's covenant not to sue is defined in "Covered Matters," Consent Decree, Article XI;
9 Article VIII, par. 35.

10 6. Reservation of Rights. The State reserves the right to proceed against Sterling No.
11 2 for any matter not covered by the Consent Decree. Consent Decree, Article XII.

12 7. Assignment of the Consent Decree. If Sterling No. 2 assigns its interest in the
13 Property, the assignee shall assume all obligations under the prospective purchaser
14 agreement and this Consent Decree. Consent Decree, Article XIV.

15 **IV. THIS COURT SHOULD APPROVE AND ENTER THIS CONSENT DECREE**

16 Prior to approving a proposed CERCLA settlement agreement, the court must find
17 that the settlement is procedurally fair, substantively fair and reasonable, and consistent with
18 the objectives of CERCLA. *U.S. v. Montrose Chemical Corp. of California*, 50 F.3d 741,
19 746 (9th Cir. 1995); *U.S. v. Cannons Eng'g Corp.*, 899 F.2d 79, 84-85 (1st Cir. 1990); *State*
20 *of Arizona v. Nucor Corp.*, 825 F. Supp. 1452, 1456, *aff'd*, 66 F.3d 213 (9th Cir. 1995). The
21 decision to approve a consent decree is left to the court's discretion, which will not be
22 reversed unless the court clearly abused its discretion. *Montrose*, 50 F.3d at 746. In
23 determining whether a settlement satisfies the foregoing test, the court is guided by two well
24 settled principles.

25 First, the court shall give deference to the agency's expertise and determination that
26 the settlement is fair, reasonable, and consistent with the objectives of CERCLA. *Montrose*,
27 50 F.3d at 746; *Cannons*, 899 F.2d at 84; *Nucor*, 825 F. Supp. at 1456. Although the true
28

1 measure of deference due to the agency depends on the persuasive power of the agency's
2 proposal and rationale, a court reviewing a proposed consent decree "must refrain from
3 second-guessing the Executive Branch." *Cannons*, 899 F.2d at 84. Such deference is
4 appropriate given that the parties, who are knowledgeable and represented by experienced
5 lawyers, "have hammered out an agreement at arm's length and advocate its embodiment in
6 a consent decree." *Id.*

7 Second, the court will not conduct a *de novo* review of the merits of the proposed
8 settlement, but neither will it "mechanically rubberstamp" the agreement. *Cannons*, 899
9 F.2d at 84; *Nucor*, 825 F. Supp. at 1456. The court will review CERCLA settlements with a
10 presumption in favor of approval. *Id.* at 87-88; *U.S. v. Bay Area Battery*, 895 F. Supp. 1524,
11 1528 (N.D. Fla. 1995). The court's task is not to substitute its own judgment for that of the
12 parties, but rather to determine whether the settlement represents a reasonable compromise
13 while bearing in mind the law's generally favorable disposition toward the voluntary
14 settlement of litigation and CERCLA's specific preference for early settlements. *Montrose*,
15 50 F.3d at 748; *Cannons*, 899 F.2d at 84.

16 A. Procedural Fairness

17 The process that results in a CERCLA settlement agreement must be procedurally
18 fair. When considering the procedural fairness of the agreement, the court must look to the
19 negotiation process and attempt to gauge its candor, openness and bargaining balance.
20 *Cannons*, 899 F.2d at 87; *Nucor*, 825 F. Supp. at 1456.

21 The Consent Decree lodged with this Court and the underlying Prospective Purchaser
22 Agreement are the result of negotiations between the Parties concerning the extent and
23 nature of the contamination at the Property, access, public notice, and other material issues.
24 The Parties are represented by experienced environmental attorneys who conducted the
25 settlement negotiations in good faith and at arm's length. The Consent Decree is the result
26 of a process that was procedurally fair.

27 B. Substantive Fairness and Reasonableness

28 Substantive fairness concerns the issues of corrective justice and accountability.
Nucor, 825 F. Supp. at 1458-59. The settlement terms should be based on an acceptable

1 measure of comparative fault that apportions liability according to a rational (if necessarily
2 imprecise) estimate of how much harm each responsible party has caused. *Cannons*, 899
3 F.2d at 87-88; *Foamseal, Inc. v. Dow Chemical Co.*, 991 F. Supp. 883, 885 (E.D. Mich.
4 1998).

5 The court's role is not to determine the best method for measuring fault or
6 apportioning liability, but rather to uphold the method proposed by the agency, unless it is
7 arbitrary, capricious, and devoid of a rational basis. *Nucor*, 825 F. Supp. at 1459; *Cannons*,
8 899 F.2d at 87-88; *Foamseal*, 991 F. Supp. at 885. In determining whether a settlement is
9 substantively fair, the court will consider both tangible and intangible benefits to the state
10 and prior cooperation by the settling party. *Nucor*, 825 F. Supp. at 1462.

11 In enacting A.R.S. § 49-285.01, the Arizona Legislature determined it was in the
12 public interest to allow innocent prospective purchasers to escape the financial burdens of
13 CERCLA and WQARF by settling with ADEQ. The Legislature enacted A.R.S. § 49-
14 285.01 in order to allow prospective purchasers, who had nothing to do with the
15 contamination, to quickly settle their liability to the State and receive contribution protection
16 under WQARF and CERCLA. The statute provides a simple, rational, and efficient method
17 of resolving an innocent owner's potential liability under WQARF and CERCLA liability.
18 In turn, the relief afforded to prospective purchasers acquiring contaminated properties
19 promotes the redevelopment of "brownsfield" properties. The Consent Decree between the
20 Parties satisfies the test of substantial fairness and reasonableness.

21 C. Consistency With the Objectives of CERCLA

22 The proposed settlement must be consistent with the CERCLA principles of
23 accountability, the desirability of an unsullied environment, and promptness of response
24 activities. *Charles George Trucking*, 34 F.3d at 1086; *Nucor*, 825 F. Supp. at 1464.
25 CERCLA is designed to favor settlements over litigation and its primary goal is to
26 encourage early settlements. *Montrose*, 50 F.3d at 748; *Cannons*, 899 F.2d at 84; *Nucor*,
27 825 F. Supp. at 1464.

28 The Consent Decree between the Parties is consistent with the objectives of
CERCLA. Sterling No. 2's acquisition and redevelopment of the Property will put

1 otherwise vacant property to a productive reuse while relieving the company of the harsh
2 consequences of strict, joint and several liability under CERCLA and several liability under
3 WQARF.

4 **V. CONCLUSION**

5 Based upon the foregoing, the State requests that this Court approve and enter the
6 Consent Decree as lodged.

7 RESPECTFULLY SUBMITTED this 10 day of January, 2002.

8 JANET NAPOLITANO
9 Attorney General

10 By Linda J. Pollock
11 Linda J. Pollock, Assistant Attorney General
12 Attorneys for Plaintiff
13 State of Arizona

14 FENNEMORE CRAIG

15 By Robert J. Kramer
16 Robert J. Kramer, Esquire
17 Attorneys for Defendant
18 Sterling Network Exchange No. 2, LLC

19 Original and one copy filed
20 with the U.S. District Court
21 this 10th day of January, 2002

22 and a copy mailed this same date to:

23 The Honorable Stephen L. Verkamp
24 U.S. Magistrate Judge
25 123 North San Francisco St.
26 Flagstaff, AZ 86001

27 ABBY Lewis
28 214955v1

EXHIBIT 1
AFFIDAVIT OF PUBLICATION
STERLING NO. 2

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OF ENVIRONMENTAL
QUALITY NOTICE OF SET-
TLEMENT AND 10 DAY
COMMENT PERIOD
UNITED STATES DISTRICT
COURT FOR THE DISTRICT
OF ARIZONA
PLEASE TAKE NOTICE
that the State of Arizona ex parte
Jacqueline E. Schaefer, Direc-
tor, Arizona Department of
Environmental Quality (the
"State") and Sterling Network
Exchange No. 2, LLC have
entered into a proposed Con-
sensus Decree. The Decree con-
cerns the alleged releases and
alleged threats of releases of
hazardous substances into the
environment from the vacant
parking lot which is adjacent to
the former Phoenix News-
papers Building located at 208
East Van Buren Street, Phoe-
nix, Arizona (the "Property").
This Property is located within
the Motorola, Inc. 52nd Street
Superfund Site (the "Site"). This
Property is a vacant lot lo-
cated on the northeast corner
of Central Avenue and Van
Buren Street in Phoenix, Ari-
zona. The legal description of
the Property is contained in
the Prospective Purchase
Agreement entered into be-
tween ADEQ and Sterling Net-
work Exchange No. 2, LLC
and recorded as document
number 2000-06889 in the
Office of the Maricopa County
Recorder. The Property is a
vacant lot and adjacent to
property that is the sub-
ject of a separate Consent
Decree filed concurrently
herewith between the State
and Sterling Network Ex-
change, LLC, U.S. District
Court No. CIV. 01-0360-SLV.
The Site is part of the Moto-
rola 52nd Street Superfund Site
listed by EPA in the National
Contingency Plan, 40 C.F.R.
Part 300. The Property is a
facility as defined in § 101(9) of
CERCLA, 42 U.S.C. § 9601(9);
Sterling is an owner pursuant
to A.R.S. § 49-283 and § 17(a)
of CERCLA, 42 U.S.C. § 9607,
and has qualified as a prospec-
tive purchaser pursuant to
A.R.S. § 49-285.01 entitled to an
award of protection from
claims for contribution and
cost recovery pursuant to Sec-
tion 112 of CERCLA and §
107-192(c) of RCRA, upon
court approval and entry of
the Decree. A.R.S. § 49-285.01 authorizes
ADEQ to seek an award from
this Court on behalf of a person
who purchases contaminated
property where the person
demonstrates that (1) the per-
son did not cause or contribute
to the existing contamination
and (2) that the proposed
redevelopment or reuse of the
property will not contribute to
or exacerbate existing known
contamination and will provide
a substantial public benefit.
Copies of the complaint, the
Consensus Decree, and other
papers related to this matter
have been filed with the Clerk
for the United States District
Court in and for the District of
Arizona in Phoenix. Copies can
be obtained from the Clerk for
the United States District
Court in and for the District of
Arizona and the Arizona De-
partment of Environmental
Quality, 3033 N. Central Ave-
nue, Phoenix, Arizona 85012.
All persons who desire to com-
ment on this Settlement must
do so by filing their written
comments with the Clerk of the
United States District Court for
the District of Arizona, 230 N.
First Avenue, Phoenix, Ari-
zona 85025, no later than 30
days from the date of publica-
tion of this Notice with refer-
ence to State of Arizona v.
Sterling Network Exchange
No. 2, LLC, No. CIV. 01-0359,
PMX SLV. Copies shall also be
mailed to the parties as fol-
lows:
Plaintiffs:
Rich Olm, Project Manager
Arizona Department of Envi-
ronmental Quality 3033 N. Cen-
tral Avenue, Phoenix, Arizona
85012-2905
Linda J. Pollock, Assistant At-
torney General, Office of the
Arizona Attorney General 1275
West Washington Phoenix, Ar-
izona 85007
Defendants:
Robert J. Krametz, Esquire
Fennimore, Craig 3003 North
Central Avenue, Suite 1600
Phoenix, Arizona 85012

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STERLING NETWORK EXCHANGE NO. 2, LLC

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Phoenix, Arizona 85001-0194
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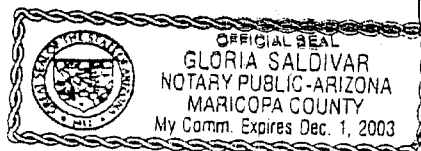
STATE OF ARIZONA }
COUNTY OF MARICOPA } SS.

Tom Bianco, being first duly sworn, upon oath deposes and says: That he is the legal advertising manager of the Arizona Business Gazette, a newspaper of general circulation in the county of Maricopa, State of Arizona, published weekly at Phoenix, Arizona, and that the copy hereto attached is a true copy of the advertisement published in the said paper on the dates indicated.

06/14/2001
06/21/2001

Tom Bianco

Sworn to before me this
21ST day of
JUNE A.D. 2001



Gloria Saldivar
Notary Public



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

JANET NAPOLITANO
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX, AZ. 85007-2926

MAIN PHONE : (602) 542-8500
FACSIMILE : (602) 542-7798

January 14, 2002

Nadia Hollan, RPM
SFD-8-2
U.S. Environmental Protection Agency
Region IX
75 Hawthorne Street
San Francisco, California 94105-3901

RE: Sterling Network Exchange, LLC and Sterling Network Exchange No.2

Dear Ms. Hollan:

Linda Pollock, Assistant Attorney General, asked that I forward to you the attached documents in the above referenced matter:

1. Notice of Lodging of Consent Decree;
2. Order;
3. Joint Motion for Entry;
4. Consent Decree

Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Barbara L. Neilson".

Barbara L. Neilson
COE Student
Environmental Enforcement Section

Enclosure(s)

BN/bn
219517